PROPOSALS TO SIMPLIFY AND STREAMLINE THE PAYMENT OF EMPLOYMENT TAXES FOR DOMESTIC WORKERS

Y 4.W 36:103-24

Proposals to Sinplify and Streanlin...

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

AND

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MARCH 4, 1993

Serial 103-24

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PROPOSALS TO SIMPLIFY AND STREAMLINE THE PAYMENT OF EMPLOYMENT TAXES FOR DOMESTIC WORKERS

THURSDAY, MARCH 4, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY AND
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittees met jointly at 10:08 a.m., in room B–318, Rayburn House Office Building, Hon. Andy Jacobs, Jr. (chairman of the Subcommittee on Social Security), and Hon. Robert T. Matsui (acting chairman of the Subcommittee on Human Resources) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
THURSDAY, FEBRUARY 25, 1993

PRESS RELEASE #1
SUBCOMMITTEE ON SOCIAL SECURITY
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-9263

THE HONORABLE ANDY JACOBS, JR. (D., IND.), CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY, AND THE HONORABLE ROBERT T. MATSUI (D., CALIF.), ACTING CHAIRMAN, SUBCOMMITTEE ON HUMAN RESOURCES, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCE A JOINT HEARING ON PROPOSALS TO SIMPLIFY AND STREAMLINE THE PAYMENT OF EMPLOYMENT TAXES FOR DOMESTIC WORKERS

The Honorable Andy Jacobs, Jr. (D., Ind.), Chairman, Subcommittee on Social Security, and the Honorable Robert T. Matsui (D., Calif.), Acting Chairman, Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittees will hold a joint hearing on proposals to simplify and streamline the payment of Social Security and Federal unemployment taxes on domestic workers. The hearing will be held on Thursday, March 4, 1993, in room B-318, Rayburn House Office Building, beginning at 10:00 a.m. Testimony will be received from invited witnesses only.

BACKGROUND:

Individuals who hire domestic employees such as babysitters, housekeepers, and yard workers are required to withhold and pay employment taxes when the worker's wages exceed certain thresholds. (Individuals who hire independent contractors to provide domestic services are excluded from these requirements.) For Social Security, the wage threshhold is $50 per quarter; for Federal unemployment insurance, it is $1,000 per quarter. When the $50 threshold is reached, the employer must file a quarterly report (form 942) with the Internal Revenue Service, submitting with it the required Social Security tax for both the employer and employee. The employer must also provide the employee and the Social Security Administration with a Wage and Tax Statement (form W-2) at the end of the year. When the $1,000 unemployment insurance wage threshold is reached in any calendar quarter, the employer must file a report (form 940) with the IRS at the end of the year, submitting the required tax.

In addition, employers of domestic employees must: notify employees who may be eligible for the earned income tax credit (EITC) of the existence of this credit; file and pay State unemployment insurance tax in each quarter in which the State unemployment insurance wage threshold (equal to the $1,000 Federal threshold in 45 States) is reached; withhold income tax if the employee requests it and the employer agrees; and, in some States, report wages paid to domestics to the State for purposes of State income tax.

These requirements have recently come under criticism on two counts. First, originally enacted in 1950, the $50 Social Security threshold now triggers tax liability at a much lower level of real wages than it did four decades ago. As a result, employers who hire domestics sporadically or for brief periods become subject to tax. Second, as described above, Social Security tax liability triggers a myriad of both quarterly and annual employer reporting and withholding requirements. Some argue that these requirements so increase the difficulty of hiring a domestic that household employees are being forced into the underground economy.

SCOPE OF THE HEARING:

The hearing will focus on three related issues:

- the burden of employment tax compliance for individuals who hire domestic workers;
- the consequences of noncompliance for domestic workers who attempt to qualify for Social Security and unemployment insurance benefits; and

(OVER)

- proposals for simplifying and streamlining the administrative requirements that apply to employers of domestic workers.

With respect to simplification, witnesses are invited to comment on the provision of H.R. 13, introduced by Chairman Rostenkowski, which would convert the $50 per quarter Social Security wage threshold to $300 annually; enable domestic employers to file Social Security and Federal unemployment insurance on their personal income tax returns; and permit employers of domestics to adjust tax withholding from their own wages to cover their Social Security and Federal unemployment insurance tax liability. In the 102nd Congress, these provisions were approved by Congress, first, as part of H.R. 4120 and, subsequently, as part of H.R. 11, both of which were omnibus tax bills vetoed by President Bush.

Several other suggestions have also received recent attention. Some have proposed increasing the Social Security wage threshold to a significantly higher amount, such as $1,000 annually; $1,750 annually (the current $50 quarterly threshold annualized and indexed for wage increases since 1950); or $2,360 annually (the earnings required in 1993 for four quarters of Social Security coverage). Others have suggested a temporary tax amnesty, during which employers who failed to pay employment taxes on domestic workers could do so without penalty. Still others have proposed retroactive indexation of the $50 threshhold, so that employers who paid domestics less than the retroactively-indexed threshold would owe no taxes for past years.

Witnesses are invited to comment on these proposals, as well as to offer additional suggestions. Those who favor a significantly higher Social Security wage threshold may also wish to suggest methods for insuring that domestics who are paid relatively small amounts by several employers can earn the quarters of coverage necessary for retirement and disability benefits.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any persons or organizations wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Thursday, March 18, 1993, to Janice Mays, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement wish to have their statements distributed to the press and interested public at the hearing, they may deliver 100 additional copies for this purpose to the Subcommittee, room B-316 Rayburn House Office Building, on the day of the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal size paper and may not exceed a total of 10 pages.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Chairman JACOBS. The hearing will come to order.

Our hearing today is basically on proposals for the payment of Social Security taxes. In 1950, that threshold was set at $50, and we suddenly wake up and find in 1993 it is still $50. On the other hand, the eligibility to be credited for a quarter was $50 in 1950 and today it is $590. By some paradox, the Government managed to keep up with the threshold of eligibility for Social Security benefits, but did not adjust the threshold for paying Social Security taxes for domestic workers.

A thousand years ago, when I served in the Indiana Legislature, we took up the subject 1 year of cleaning up the Indiana laws, those that were outdated. For example, there was a civil rights law in Indiana passed during the Civil War time dealing with public accommodations. If anybody violated it, the slap was the draconian fine of $3. We had to update that.

Actually, we did not just update laws, we "uncrazied" some of them. In Indiana, it was a crime as late as 1959 for a man with a moustache to kiss a woman, and we took that one off the books. There was no way to get reelected if you didn't in those days. [Laughter.]

The other one that comes to mind was a statute that said if two trains met on the same track, both would stop and neither would proceed until the other had passed. The law was a product of one of those 3 a.m. sessions, I guess. [Laughter.]

I think, generally, that Members of Congress, even the members on this subcommittee, were not conscious of what had happened over the years about this threshold, and now that our consciousness has been raised I think we are all prepared to raise the threshold or, to be more specific, adjust the threshold in real dollars to what it was in 1950.

With that, I yield to Mr. Bunning. I hope that is a soft ball.

Mr. BUNNING. That is, Chairman Jacobs. Thank you.

Chairman Matsui, I appreciate you calling the joint hearing. Of course, I guess we have to thank Zoe Baird. Single-handedly, Ms. Baird has done more to publicize the law which provides Social Security coverage for domestic employees than the IRS or the Social Security Administration has ever been able to do.

We have to start out by acknowledging the fact that the existing $50 per quarter threshold for reporting and paying Social Security taxes is too little and too low. It may have been realistic in 1955, but it no longer is.

Simplified reporting procedures like the ones we included in H.R. 11 last year are urgently needed. Those reforms would have established an annual threshold of $300 and allow reporting through the homeowner's owner tax returns. I would prefer even higher thresholds, but, nonetheless, this would do much to ease the reporting burden.

In the same vein, similar liberalization of unemployment compensation is needed and certainly would be welcome. However, I understand that addressing the reporting requirements for unemployment is a bit more complicated than Social Security, because of the need to coordinate any changes we try to make with the States who administer that program.

This is not to say that the issue of FICA tax reporting is not complicated in its own right. It is.

We start out with the basic problem of a widespread lack of knowledge among the general public about reporting requirements. This is coupled to the fact that there is frequently considerable confusion about the status of domestic employees. Domestic employment relationships fall into a gray area where it is difficult to determine whether they are employees or legitimate independent contractors.

Compounding the problem further is the fact that most domestic employees are relatively poor and many prefer to keep their incomes in the underground economy and forego future Social Security benefits, rather than have Social Security taxes withheld and risk liability for income taxes, as well.

As a result, we end up with many low-income workers, particularly women, failing to qualify for Social Security benefits, benefits they could have, if only taxes had been withheld.

So we obviously need to do two things: First, we need to update and simplify the reporting requirements, so that it is less burdensome on employers. Second, we need to publicize the value of Social Security coverage for low-income workers. Social Security coverage is really a good deal for them, and we have to get that message out, the message that Social Security provides retirement, survivor, disability and Medicare benefits, and that the structure of the program is weighted to low-income earners.

Hopefully, these hearings will help draw attention to this problem and set the stage for the kind of reform we need to eliminate it.

Thank you very much.

Chairman JACOBS. Thank you, Mr. Bunning.

Mr. Matsui is the chairman of the other subcommittee, the Public Assistance Subcommittee, and you can recognize yourself, I guess.

Acting Chairman MATSUI. Thank you very much, Mr. Chairman. I would like to thank both you and Mr. Bunning for being the ones who called these hearings, and I appreciate it very much.

I just have a couple observations to make. One of the reasons that this issue came up was obviously because of the Attorney General nominee, Zoe Baird. I have to say that this was not an inadvertent mistake, in my opinion. When you are talking about literally thousands of dollars, tens of thousands of dollars in failure to pay withholding taxes, in my opinion, it borders on the edge of criminality.

I think former Congressman Jim Corman made the observation in the newspaper right after this issue became public that this is not a victimless crime, that this is a very, very serious situation.

If we were talking about a baby-sitter, who perhaps got $50 or $60 a quarter from a neighbor, that is one thing. But we are talking about individuals who are giving up very valuable rights, such as the right to Social Security benefits, unemployment benefits and rights that most ordinary Americans who are wage earners expect as an entitlement. I think these hearings are important, first of all, to call attention again to this very serious matter, but also to make adjustments, as both you, Mr. Chairman and Mr. Bunning, have

suggested, because there are some people that, through inadvertence, have violated the law, because of the low threshold, because of the reporting requirements and because of the difficulties in knowing how to collect the funds.

At the same time, I do not want to suggest that, because we are probably going to have to change the law, many people who are violating the law now should go with excuses. Again, if you are talking about tens of thousands of dollars in nonpayment of withholding, it is a very, very serious crime. If these same people had failed to pay their income taxes, we would haul them into the courts and probably incarcerate them in the months of March and April, just as a demonstration that people should not fail to pay their taxes.

This issue is even more severe, because, again, it is a crime not only against Government, but it is a crime against the employees of these people. So I appreciate your holding these hearings, and I now yield to my distinguished colleague from Pennsylvania, Mr. Santorum.

[The opening statement of Mr. Matsui follows:]

OPENING STATEMENT OF
THE HONORABLE ROBERT T. MATSUI
ACTING CHAIRMAN, SUBCOMMITTEE ON HUMAN RESOURCES
HEARING ON PROPOSALS TO SIMPLIFY AND STREAMLINE THE
PAYMENT OF EMPLOYMENT TAXES FOR DOMESTIC WORKERS

MARCH 4, 1993

I am pleased to join my colleague, Chairman Jacobs in holding this hearing on an issue that has received a great deal of publicity over the past few months. This hearing is both timely and necessary. The federal laws governing payment of Social Security and unemployment taxes are complex and often cumbersome to individuals who employ individuals to perform domestic duties. The result is that a population of workers who most need these benefits are rendered ineligible.

With the recent attention to the nonpayment of these taxes by domestic employers, it is incumbent upon Congress to take a close look at how these programs do and do not work. While the Social Security tax system is often complex and confusing, the nation's unemployment compensation system is even more of a mystery to domestic employers. Unlike Social Security, the unemployment compensation is a federal-state partnership that is based on federal law, but which is carried out by the states. As a result, it is much more difficult to design a uniform solution to better enable domestic employers to pay federal unemployment taxes.

Under current law, individuals who pay a domestic worker more than $1,000 in any calendar quarter are subject to both federal and state unemployment taxes. If an employer reaches this $1,000 threshold, he or she is required to count into the domestic worker's income any in-kind benefits, such as room or board. Employers must pay tax on at least the first $7,000 of income, although this amount ranges from $7,000 to $23,900, depending upon the state law. Additionally, state unemployment taxes vary based on the experience of the employers former workers with regard to drawing unemployment benefits.

The lack of standardization with regard to the collection of the taxes in question -- social security, FUTA, and federal income tax -- leads to widespread confusion on the part of employers of domestic workers. The issue is further confused by the differences that exist in each program. Filing rules, wage thresholds, and reporting requirements vary depending on the type of tax and where the employer lives.

The result of this confusion is that thousands of workers never receive benefits to which they may be entitled. For the most part, domestic employees are those who will most need Social Security earnings during their retirement years. The Chairman of the Ways and Means Committee, along with Chairman Jacobs, has introduced legislation that would simplify the payment of these taxes for domestic employers. H.R. 13 would convert the $50 per quarter Social Security wage threshold to $300 annually. The Chairman's legislation also would allow employers to file both Social Security and FUTA taxes on their personal income tax returns. I think these are important reforms, and changes which should be closely examined in consultation with the agency's represented here today.

There is a tremendous need to simplify the filing of these taxes, both for employers and domestic employees. I am pleased to join in holding this hearing today and I look forward to working with my colleague in examining and simplifying these rules, both for the sake of the employers and the employees involved.

Mr. SANTORUM. Thank you, Mr. Chairman.

I, too, want to thank Mr. Jacobs and you for holding this hearing. I do not know if I can add much to the discussion already, and I have always thought, if you do not have much to add, do not talk about things and prove that you do not have much to add, so I will just say thank you for holding this hearing and I am looking forward to hearing the testimony.

Thank you.

Chairman JACOBS. Mr. Reynolds.

Mr. REYNOLDS. I just want to thank you for having this hearing. This is an issue that has come to light because of the proposed appointment, but it is something that we really need to focus on in this country as far as domestic workers are concerned.

Thank you.

[The opening statement of Mr. Reynolds follows:]

STATEMENT OF CONGRESSMAN MEL REYNOLDS
ON THE JOINT HEARING ON DOMESTIC WORKERS
MARCH 4, 1993

MR. CHAIRMAN, I APPRECIATE YOUR EFFORT, AS WELL AS THE EFFORT OF CHAIRMAN MATSUI, TO CONVENE THIS HEARING. "THE ZOE BAIRD HEARING," AS THIS COULD BE DUBBED, DEALS WITH A SERIOUS ISSUE. THE CURRENT LAW RELATED TO THE PAYMENT OF EMPLOYMENT TAXES FOR DOMESTIC WORKERS, SHOULD BE AWARDED THE RUBE GOLDBERG PRIZE FOR CLARITY AND EFFICIENCY. THE LAW IS LONG OVERDUE FOR OVERHAUL, AND I LOOK FORWARD TO TODAY'S WITNESSES AND THEIR TESTIMONY AS TO HOW WE CAN CORRECT THIS PROBLEM.

WHEN LAWS ARE ENACTED WHICH, BECAUSE OF THEIR COMPLEXITY, ENCOURAGE, INDEED, PROD OTHERWISE LAW-ABIDING CITIZENS INTO NON-COMPLIANCE, WE, THE CONGRESS, MUST ASK OURSELVES HOW WE GOT TO SUCH A SITUATION. CLEARLY, IN THIS INSTANCE, FAILING TO ADJUST THE WAGE THRESHOLD FROM ITS EISENHOWER ADMINISTRATION-ERA LEVELS CONTRIBUTED TO THE PROBLEM. FURTHER, THE REQUIREMENTS FOR COMPLIANCE ARE SO BURDENSOME, IN MY OPINION, THAT WE MUST REALIZE WHAT MS. BAIRD WENT THROUGH WAS AN ACCIDENT WAITING TO HAPPEN.

THE PRICE OF NOT ADJUSTING THE THRESHOLD IS VERY HIGH. MANY DOMESTIC WORKERS, THE MAJORITY OF WHOM ARE FEMALE, IN PARTICULAR MINORITY WOMEN, DO NOT RECEIVE THE FULL SOCIAL SECURITY BENEFIT TO WHICH THEY ARE ENTITLED. AS A RESULT, MANY ARE FORCED TO CONTINUE WORKING WELL INTO RETIREMENT AGE, SINCE THEIR EMPLOYER HAS NOT PAID THEIR SOCIAL SECURITY TAXES, AND THEREFORE, THE EMPLOYEE IS NOT ELIGIBLE FOR SOCIAL SECURITY BENEFITS. A VICIOUS CYCLE OF DEPENDENCE WITHIN AN UNDERGROUND ECONOMY HAS RAGED ON FOR GENERATIONS.

RATHER THAN HELP SHED LIGHT ON THE PROBLEM, AND FORCE THIS PRACTICE, HOWEVER UNINTENTIONAL, INTO THE OPEN, THE LAWS ON THE BOOKS ACTUALLY DISCOURAGE COMPLIANCE AND MAINTAIN THIS OPPRESSIVE CLIMATE.

ONE ISOLATED EXAMPLE AS TO THE ABSURDITY OF THE CURRENT SITUATION, ONE NEED LOOK NO FURTHER THAN THE TEST TO DETERMINE WHETHER OR NOT A WORKER IS TO BE CONSIDERED AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR FOR PURPOSES OF TRIGGERING EMPLOYER TAX LIABILITY. "THE COMMON LAW CONTROL TEST" CAN BEST BE DESCRIBED AS A TEST WHICH TRIES TO QUANTIFY A SLIPPERY SLOPE. THE BASIS OF THE TEST IS WHETHER OR NOT THE EMPLOYER HAS THE RIGHT TO TELL THE EMPLOYEE "WHAT TO DO AND HOW, WHEN AND WHERE TO DO IT (ALTHOUGH) THE EMPLOYER DOES NOT HAVE TO ACTUALLY ISSUE THESE ORDERS BUT ONLY RETAIN THE RIGHT TO DO SO (Emphasis mine). IS IT ANY WONDER THOUSANDS, MAYBE MILLIONS OF AMERICANS FAIL TO COMPLY WITH THE LAW?

IN NO WAY AM I CONDONING THOSE WHO FAIL TO COMPLY WITH THE LAW. I AM SAYING THAT WE MUST DO WHATEVER WE CAN TO MAKE SUCH A LAW WORKABLE, SO THAT AMERICANS THAT NEED BABYSITTERS, YARD HELP, HOUSEKEEPERS, CHILD CARE, ETC., CAN GET IT WITHOUT RUNNING AFOUL OF THE LAW MORE EASILY THAN IT IS TO FIND THE HELP IN THE FIRST PLACE.

I THANK THE CHAIR AND WELCOME TODAY'S WITNESSES AND THEIR TESTIMONY.

Chairman JACOBS. Thank you.

We are ready for our first witness now, who is Representative Goss from Florida. We welcome you, as David Brinkley would say, thanks for coming in. We appreciate it.

STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. Mr. Chairman, Mr. Vice Chairman and members, thank you very much for the opportunity to be here. I appreciate it very much.

I do have a statement which I would like to formally ask be entered in the record.

Chairman JACOBS. Without objection, all statements will be included.

Mr. GOSS. I will abbreviate further my statement by saying that H.R. 929, which I am proposing, does two things I think Mr. Bunning has already hit on. It raises the $50 threshold trigger to $300, and we arrived at that number by simply going through the math since 1954 and figuring in the appropriate inflation and cost of living adjustments. I, too, wish that number were higher, because I think it would make a little more sense. But $300 was the number that worked out arithmetically, and that is where we ended up.

The second thing we did I think is more important, and that is the one-time payment with the income tax. I believe that is going to make a very important difference. I think it will make this whole process a lot more user friendly. I believe that it will increase the proper use of procedures. I certainly think it will enhance revenues, and I have not had my bill scored and I cannot tell you how many more dollars we are going to get by compliance versus how many we might lose by collecting once a year, rather than four times a year. I do not have that information. I suggest to you that whoever scores that is going to be using a crystal ball, by and large, anyway.

And the third benefit area I think is the work force that Mr. Matsui so eloquently spoke to, that there are people who are not getting their rights and their benefits who are now going to have a better opportunity. In fact, I think these changes will create a strong incentive.

The one other point my bill does not address, although we have discussed it, is indexing, and I know other legislation that you will be considering will discuss indexing. I think that makes sense, as long as there is a way for the individual employer out there to understand what the new number is. If it gets too complicated, then we become user unfriendly again.

I can tell you from personal experience in my district that when people see an envelope come with a Government seal and stamp on it, a lot of my constituency is older, they are senior citizens, and that is a time of anxiety. They do not like mail from the Government. And I think if we could work a process where we had a one-time letter or a one-time procedure that went in with their income tax, I think that would do a lot for America and for the anxiety level in my district and, therefore, my anxiety level, and so that is why we have put that in.

That is essentially all I had, and I would like to ask one further favor of the chairman. I have been summoned to the Rules Committee and I would like your indulgence to depart at this time, with no disrespect. If there are further questions by the committee on any of the legislation, I would be happy to submit in writing written answers on them.

Chairman JACOBS. Why don't we proceed, and if there are any questions, they can be addressed to you in writing, as well.

Mr. GOSS. Thank you, sir. May I excuse myself?

Chairman JACOBS. You certainly may, and thank you for your contribution for the record. As usual, it is very informed and very affable.

Mr. GOSS. Thank you, sir.

[The prepared statement follows:]

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STATEMENT OF CONGRESSMAN PORTER GOSS BEFORE THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS FULL COMMITTEE MARCH 4, 1993

MR. CHAIRMAN : GOOD MORNING, I CERTAINLY APPRECIATE THE OPPORTUNITY TO TESTIFY BEFORE YOUR SUBCOMMITTEE TODAY, ESPECIALLY AS YOU CONSIDER AN ISSUE NEW TO MANY AMERICANS.

AS YOU WELL KNOW, ZOE BAIRD'S CONFIRMATION HEARINGS IN THE SENATE MADE A LITTLE KNOWN, AND SELDOM HEEDED SOCIAL SECURITY TAX CODE, FRONT PAGE NEWS. THIS CODE HAS ITS ORIGINS IN THE FEDERAL INSURANCE CONTRIBUTIONS ACT OF 1954 WHICH INCLUDED A PROVISION REQUIRING HOUSEHOLDERS TO WITHHOLD SOCIAL SECURITY TAXES FROM DOMESTIC EMPLOYEES EARNING MORE THAN $50.00 IN A CALENDAR QUARTER. IT ALSO REQUIRED SUCH EMPLOYERS TO FILE QUARTERLY SOCIAL SECURITY TAXES FOR THIS EMPLOYEE.

UNFORTUNATELY, THIS MEANS THAT IF YOU PAY SOMEONE MORE THAN $4.00 A WEEK TO WALK YOUR DOG OR CLEAN YOUR HOME OR BABYSIT YOUR CHILDREN, YOU SHOULD BE FILING IRS FORM 924 EVERY QUARTER. WITH THE FORM, YOU MUST ENCLOSE A SOCIAL SECURITY PAYMENT (7.65% OF THE WORKER'S EARNINGS AND ANOTHER 7.65% FROM YOU, THE EMPLOYER). YOU WILL ALSO NEED TO FILE IRS FORM SS-4 TO OBTAIN AN EMPLOYER IDENTIFICATION NUMBER AND ONCE A YEAR, YOU MUST FILL OUT A W-2 FORM, GIVING ONE COPY TO THE EMPLOYEE AND ANOTHER TO THE SOCIAL SECURITY ADMINISTRATION.

IN MY ESTIMATION, THIS LAW POSES AN UNDUE BURDEN FOR THE AVERAGE AMERICAN CITIZEN TRYING TO COPE WITH OCCASIONAL CHILD CARE OR HEAVY YARD WORK. CENSUS DATA CONFIRMS THE FACT THAT ONLY ONE INDIVIDUAL IN FOUR ACTUALLY FILES THE NECESSARY PAPERWORK AND THIS MEANS THREE QUARTERS ARE IN VIOLATION OF AN I.R.S. TAX CODE.

I HAVE INTRODUCED LEGISLATION NUMBERED H.R. 929 WHICH WOULD RAISE THE QUARTERLY THRESHOLD FROM $50.00 TO $300.00, ADJUSTING FOR INFLATION AND MAKING THE TAX CODE MORE CURRENT. THIS BILL WOULD ALSO MAKE THE FILING PROCESS LESS BURDENSOME BY ELIMINATING THE QUARTERLY REQUIREMENT AND ALLOWING PAYMENT OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF REGULAR INCOME TAXES.

THIS IS, ADMITTEDLY, A SMALL CHANGE, BUT ONE WHICH WILL MAKE THE DIFFERENCE FOR PEOPLE WHO NEED A LITTLE EXTRA HELP AROUND THE HOUSE. NOW THAT MORE PEOPLE KNOW ABOUT THIS LAW, IF THE TAX CODE IS CHANGED TO MAKE IT A LITTLE MORE "USER-FRIENDLY" FOR EMPLOYERS, MORE PEOPLE WILL COMPLY BY FILING SOCIAL SECURITY TAXES FOR DOMESTIC EMPLOYEES. THIS MEANS THAT DOMESTIC EMPLOYERS, MOST OF WHOM WANT TO BE ELIGIBLE FOR SOCIAL SECURITY, WILL HAVE A GREATER CHANCE OF EARNING THE CREDITS NECESSARY TO QUALIFY FOR BENEFITS.

ALL IN ALL, MY LEGISLATION WOULD BENEFIT BOTH THE EMPLOYER AND EMPLOYEE. OTHER LEGISLATION HAS INCORPORATED AN INDEXING FEATURE, WHICH WOULD PREVENT US FROM HAVING TO ADDRESS THIS ISSUE ON A YEARLY BASIS. I SUPPORT THIS PROVISION AND HOPE IT IS INCLUDED IN THE FINAL BILL FORWARDED.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

Chairman JACOBS. Representative Sarpalius.

STATEMENT OF HON. BILL SARPALIUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. SARPALIUS. Thank you, Mr. Chairman and members of the committee.

I would like to thank you for this opportunity to testify before you today. I commend the committee for holding such an important hearing.

Mr. Chairman, I am not an expert on Social Security and I do not claim to have any particularly unique insight into this matter. But I do know what a law that has outlived its time looks like. The $50 a quarter threshold for Social Security withholding for domestic workers is such a law.

As you are well aware, the $50 threshold was passed in 1950 to ensure that domestic workers, such as nannies, gardeners, et cetera, would be covered by the Social Security insurance net. In those days, it was quite unlikely that the $50 threshold would cover neighborhood kids who watched your children on occasion or mowed your lawn twice a month. Rather, it covered people who earn their livelihood through domestic services.

Unfortunately, the $50 threshold was never raised since its passage, nor was any provision written into the law to adjust the withholding threshold for wage or inflation increases.

The passage of time has made the $50 a quarter threshold a ridiculously low figure. As anyone with children knows, hiring a neighborhood teenager for a couple of days a month to help out around the home will cost well over $50, let alone $50 a quarter. As the law was written, you should be withholding and matching Social Security taxes from that teenager's pay. Anything less is a violation of the law.

Unfortunately, I think that few American families currently bother to withhold, and then only those families that face Senate confirmation hearings. In fact, I doubt that most families realize that they are required to withhold taxes. But if we are going to require that Social Security be withheld from the paychecks of domestic workers, we should make sure that the threshold is reasonable.

The time has come to raise the $50 threshold. My legislation would adjust the 1950 figure for the increase in the cost of living, about $245, and further provide for the threshold's adjustment with future changes in the cost of living.

While my legislation uses increases in the cost of living to adjust the withholding threshold, wage adjustments may be a more appropriate response. I chose to use cost of living to determine increases in the threshold, simply because I believe it accurately reflects the current and future purchasing power of the original legislation. But whatever the committee decides, the important point is to raise this outdated figure.

Finally, I urge the committee to further amend the withholding threshold to provide for future increases in the cost of living or to provide for the future wage growth. If Congress is going to fix this provision, we should do it right and avoid making future action on this measure unnecessary.

Mr. Chairman and members, I thank you for giving me the opportunity to testify before you today.

Chairman JACOBS. Thank you.

Representative Klug.

STATEMENT OF HON. SCOTT L. KLUG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KLUG. Thank you for the opportunity to testify and holding these hearings.

Again, to Chairman Rostenkowski, who is not here, and to many of you on the panel, I wish to express my gratitude for trying to fix this last year, long before any of us ever heard of Zoe Baird and the problem we have all gotten ourselves into.

When the law was enacted in the 1950s, as my colleagues have just said, the $50 threshold was reasonable. However, in 1993, it is obvious to everyone in this room that the $50 threshold is entirely unrealistic. My legislation, which incidentally has attracted about 50 cosponsors at this point, would bring the figure up to date, so that the average family can hire a baby-sitter or have their sidewalk shoveled in a snowstorm, as is appropriate in Wisconsin this weekend, since we are going to get clobbered again.

H.R. 899, which we call "the baby-sitter bill," would instruct the Social Security Administration to adjust the figure to above $50, to take into account wage growth since enactment of the law and to attach a cost-of-living adjustment to the new figure based on future wage growth, as well. It also changes the reporting period from quarterly to annually, in order to save on administrative costs. Finally, my legislation would have the Social Security Administration conduct a 3-year study to ensure that the new legislation does not adversely affect the Social Security Trust Fund.

Let me belabor a few of those points for a minute, if I could. The Congressional Research Service recommends using a wage growth formula to raise the threshold. Rather than a $50 a quarter figure, we think a $400 to $500 annual range makes much more sense. First, the dollar amount is much more reasonable, and, second, a once-a-year reporting requirement at tax time is much simpler for the employer and obviously much simpler for the Government to process. The new amount would allow families to go see a movie, have the lawn taken care of or have their dog walked, without having to worry about filing the necessary paperwork to comply with today's obviously unrealistic $50 threshold.

Now, H.R. 899 also calls for a 3-year study in order to ensure that the new figure will not negatively affect the Social Security Trust Fund. We need to guarantee the solvency of the Social Security Trust Fund and prevent any actions, even well-intended actions, that might endanger it.

Finally, my bill would change the reporting requirements from a quarterly basis to an annual one. It is unrealistic to expect American families to file the paperwork every 3 months and, in addition, to expect the Social Security Administration to process this paperwork quarterly seems to me to be overly bureaucratic and also wasteful. We need to streamline the process and inject some common sense into the entire system.

Back in Wisconsin, as you might imagine, my legislation has received a great deal of positive response. Leading newspapers, such as the Milwaukee Journal, and the Milwaukee Sentinel and the Wisconsin State Journal in my hometown of Madison, have enthusiastically endorsed the legislation. I think this is an idea we should keep in mind, as we move forward on my package of ideas or those presented by my colleagues.

The Milwaukee Journal said, "It is a smart package, one that would stop turning ordinary Americans into lawbreakers, yet would protect the rights of full-time household employees who are entitled to decent retirement benefits." As I travel the 2d Congressional District of Wisconsin, I can tell you that we have heard similar appeals from people who are worried about breaking the law by just taking care of common sense duties at home with baby-sitters and lawn work.

Again, I would like to thank the chairmen respectively and thank you for the opportunity to testify in front of the subcommittees. I think there is a general consensus among Members of Congress and the American people that the law needs to be adjusted, and I am hopeful that my testimony has pushed the process along a couple of steps further.

Thank you.

Chairman JACOBS. Thank you for your contribution, Representative Klug.

Representative Meek.

STATEMENT OF HON. CARRIE P. MEEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. MEEK. Thank you very much, Mr. Chairman and members of the committee.

I am very pleased to be here today. First of all, my legislation seeks to do what you have heard others say their legislation would do. It simplifies the withholding of Social Security and unemployment taxes for domestic workers. My language is similar.

But I came here today to represent a different segment from what you have heard today. Zoe Baird has brought this to the attention of the Nation, but there are a lot of nameless and faceless people out there who for years have never been thought of in this regard.

I was once a domestic worker. My mother was a domestic worker. All of my sisters were domestic workers, and they too were plagued by the inability, when they got up in life, to be able to withdraw anything from Social Security or unemployment. So I want you to think and focus your minds on these nameless and faceless people who before now were being unrepresented.

I am so happy that each of you are here to want to do something about this, and this is not your first time. You tried it before. So I do hope that the intent of the Congress is carried through this time, and that is to help these people. It is, rather, to encourage compliance with this law, that we need these bills, and to ensure the economic well-being of these domestic workers as they retire and are put out of work.

This is not a new problem. You are familiar with it. These are the people who clean your homes, who work for you all day long

and all week long, and then they must go home and try to put their own families together, after they have worked for you all this time to make a living.

Legally and morally, we are obligated to see that their future security is not undermined. What happens to the full-time nanny who loses her job when the children get old and she cannot collect unemployment? What happens to the one who cleans houses for years and becomes too old or too frail to keep working, who has house maid's knee, who has arthritis and is unable to work any longer? If she has no Social Security record of her work, along with the taxes paid on her behalf, how is she going to live, if there is no record of that?

I am so happy that if these bills and this legislation which we are hearing today passes, these people will be taken care of. I appreciate that, and I appreciate the fact that these are arthritic women and men who get old before their time. Before they are 50 years old, they get old from this back-breaking work. Workers who fall into this category are often minority women.

I meet them every day in the 17th Congressional District. As a matter of fact, a majority of my constituents have done this kind of work all of their lives. They are already the most vulnerable people in our society, and I want to thank the Congress for focusing on these people. They work hard and they try to support families. They need Social Security and unemployment coverage.

I can understand that most of the people who ignore this do not want to break the law. There is no reason for them to want to break the law. They want to do the right thing, but most of them have been uninformed. Of course, there are many who seek to ignore the law, but I feel the majority of the women in this country who ignore this law do not do it because they want to break the law. I think there is not a knowledge of the law and not enough of it has been brought to their attention, and they would pay if it was not so cumbersome to pay it.

Think of the $50 threshold. It is an archaic law and I am so happy to see my bill, which is H.R. 1114, if it is folded into this legislation, will raise the threshold to $300 and it will also require annual reporting, rather than requiring payments as they do now.

Rather than requiring payment every quarter of $50 or more, please set the threshold at $300 or more. Even if it is higher, it is all right with me, as long as there is a threshold and there is once-a-year reporting.

In my bill, employers would be relieved of the quarterly reporting and would, instead, coordinate these payments with the payment of their income taxes. I am aware that some bills propose higher thresholds than mine, and I am sure this subcommittee may indeed decide on a different level.

I would like to emphasize, however, that the worker who has several employers should not be allowed to fall between the cracks, as many of them have over the years. The economic security of domestic workers should be our primary goal. I repeat, the economic security of domestic workers should be our primary goal, not tax relief for high-income families.

Unfortunately, many people who desire domestic help do not see themselves as employers. Many of these families, as I said, do not

want to break the law. Still others may feel overwhelmed by the prospect of the paperwork and added time. They may decide it is easier to choose a baby-sitter who works in his or her own home and to hire a company that contracts the housecleaning services. This can be done to the detriment of these people who choose to work independently, who leave my district every day and have a hard time catching a bus. Many of them have to catch three buses to get to where they are going. If this is changed, certainly it will help them.

Mr. Chairman, over the years, I have known many women who worked hard for low pay in domestic jobs. They struggle to support their children, and often manage through great effort and self-denial to save a little so their children can have a better chance at the future.

I appeal to you, and I do not think I have to, because you have this covered, but if H.R. 1114 passes along with the other legislation which you have here, you will help these domestic workers who have through the years struggled in a nameless and faceless posture and now will come up and get the economic benefits which this great country does not deny to anyone.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Testimony of Representative Carrie P. Meek
Subcommittee on Social Security
March 4, 1993

Mr. Chairman, thank you for inviting me to testify today on my bill, H.R. 1114, which seeks to simplify the withholding of social security and unemployment taxes for domestic workers. The goal of this legislation is not merely to make life easier for those who can afford to hire domestic help. It is rather to encourage compliance with the law and thereby ensure the economic well-being of domestic workers when they retire or are suddenly out of work.

This is not a new problem, but recent glare of publicity accorded to high-profile cases of failure to pay employment taxes has served to highlight the situation in which thousands of our working poor find themselves. People who clean houses, offer in-home child care, or provide other services in the home are working for a living. Legally and morally we are obligated to see that their future security is not undermined. What happens to the full-time nanny who loses her job when the children get older and she cannot collect unemployment? What happens to the woman who cleans houses for years and years and becomes too old or too frail to keep working? If she has no social security record of her work along with the taxes paid on her behalf, how is she going to live? Workers who fall into this category are very often minority women, already among the most vulnerable in our society. They work hard. They try to support families. They need social security and unemployment coverage.

Mr. Chairman, my bill is modeled after language that your committee has considered previously. Rather than requiring payments every quarter on $50 or more paid in wages, my bill would set an annual threshold of $300. Employers would be relieved of the quarterly reporting and would instead coordinate these payments with the payment of their income taxes. I am aware that some bills propose higher thresholds than mine, and your subcommittee may indeed decide on a different level than $300 annually. I would like to emphasize, however, that the worker who has several employers should not be allowed to fall between the cracks. The economic security of domestic workers should be our primary goal, not tax relief for high-income families.

Unfortunately, many people who hire domestic help do not see themselves as employers. Some knowingly choose to ignore the law. Others are just ignorant. Still others may feel overwhelmed by the prospect of the paperwork and added time and expense involved in figuring out who to call, what forms to use, how to calculate what is owed, and where to send it every three months. They may decide it is easier to choose a babysitter who works in his or her own home or to hire a company that contracts for housecleaning services. This can work to the detriment of those people who choose to work independently.

Mr. Chairman, over the years I have known many women who have worked hard for low pay in domestic jobs. They have struggled to support their children and often managed through great effort and self-denial to save a little so their children could have a better future. These are the people we cannot forget, and every measure we can take that encourage employers to obey the law and pay the taxes they owe is well worth taking. These workers have no union to speak on their behalf. They have no political power. They may live in fear of authority or be afraid to think of the future because they need every cent they make today. We as their representatives must look to their interests, and I look forward to working with you on this important legislative initiative.

Chairman JACOBS. Thank you, Representative Meek, for a very helpful addition to the record. We are grateful.

Mr. Bunning.

Mr. BUNNING. Maybe I misunderstood you, Scott, but did you say your bill does $400 to $500 on a quarterly basis, or $400 to $500 on an annual basis?

Mr. KLUG. $400 to $500 on an annual basis.

Mr. BUNNING. Do you think that is a high enough threshold? We think, or at least I do, that $400 or $500 on a quarterly basis, with one-time reporting with your own income tax, would be more in line with what we call the wage index, not the CPI, but the wage index from the time the legislation was instituted until the present time.

Mr. KLUG. Well, I think you see, obviously, even on this panel, kind of a wide range of the dollar figures. My personal sense is to make it as high as reasonably possible. If you look, for example, at the fact that we updated the reporting threshold somebody has to earn in order to qualify for quarters, and that now I think, as Mr. Jacobs said, is nearly $600, I do not think that is an unreasonable figure. But I think when we do the initial analysis, I think about a $500 figure is what the Congressional Research Service recommended to us.

Mr.BUNNING. Thank you.

Chairman JACOBS. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman.

I want to thank all of my colleagues for their contributions to this hearing. I certainly support increasing the quarterly amount and the simplification to annual reporting, rather than doing quarterly reporting. I think all that makes a good deal of sense.

My question is, once we have made those changes, do you have any suggestions or recommendations to make sure that we get uniform enforcement of the law? It is wrong for some people to comply with the law and others to intentionally not comply with the law. And I am wondering whether you have any recommendations that, after we have reformed the law, made it sensible, and people recognize that it should be enforced, whether you would support stronger enforcement of the code?

Mr. SARPALIUS. Let me respond by saying that I certainly agree with what you are saying. I think the recent Senate confirmation hearings probably brought a lot of attention to the current law and how this law needs to be updated.

As Members of Congress, we need to do our part to try to see to it that our constituents are aware of the changes that we make to this law. The legislation that all of us are proposing is legislation that is gaining a lot of attention, and we need to do our part, as well as the Social Security offices themselves, of trying to make people informed of the law.

About 25 percent of the people today abide by the law. That is, 75 percent of the people are not abiding by the law and are breaking the law, and many of those people do not even know they are breaking the law.

Mr. CARDIN. The underground economy is so large that I would hope that one of the favorable outcomes of the hearings will be that we come up with ways of having greater compliance with the law.

Mr. KLUG. Well, it seems to me not unreasonable that if you are going to hook it to a one-time annual reporting basis that has to be filed at income tax time, obviously, if you send all Americans some kind of flyer that indicates it, it is an additional warning. It seems to me, again, if you raise it to a much more reasonable threshold, I think you are going to find people comply who use a baby-sitter or use somebody to take care of their grounds on a regular basis are going to know it is the law.

Frankly, in my neighborhoods in Wisconsin, most people did not know there was even this kind of law on the books, and I think it was not an attempt to break the law. Most people are embarrassed to find out they did it, myself included, and most of the major public officials in Madison have all fessed up since this happened. So I think a one-time reminder at income tax time will serve the purpose.

Mr. CARDIN. I think there is no question that by putting it on the annual income tax return there will be a more visible reminder to people that they need to pay this particular tax.

Ms. MEEK. I also feel, Mr. Cardin, in addition to what my colleagues have said, that there are other ways of disseminating this information, particularly with the beneficiaries, the people who will be working in this case, and that is to be sure that there is some outreach by all of the various community-based organizations and groups that work with these women and these men.

Once that they know that they are due this, certainly they will say to their employer, look, I need to have withholding, because of the fact that I will need this later on. I think that is another way, their local CAA's, their local community-based organizations—there are all kinds of community- based groups that can assist in doing this.

Mr. CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Santorum.

Mr. SANTORUM. Thank you.

Mr. Cardin hit on my real concern with this whole thing. I think these are all great ideas, but I think we have got some real compliance problems. I think you are dealing with not only folks who were not aware of the law, although I believe most were not.

Mr. Sarpalius, where did you come up with the figure of 25 percent compliance? I would be amazed if compliance in my district is anywhere near 25 percent.

Mr. SARPALIUS. We received that through the CRS when we began working on this legislation, the same way we came up with $245. We got that through CRS and we basically just tied that to the cost-of-living increases from 1950 up to this current time.

Mr. SANTORUM. But the 25 percent compliance, you got the number from the CRS, the 25 percent of the people complying with the law?

Mr. SARPALIUS. That and from the Social Security office, as well.

Mr. SANTORUM. I applaud that 25 percent. I did not think it was anywhere near that.

My other concern I think that you addressed, Ms. Meek, that I was happy to hear was I think the better way to enforce this. It is to get employees to begin to be aware that this is their right and

get that information out, and you mentioned some ways we could do that. I would be anxious to work with you in doing that, because I think that is a very important aspect of disseminating that kind of information to the employees to demand their rights for retirement.

Do you see any possibility that raising this threshold, depending on where we raise it, will affect the ability for some domestics to be able to earn income from a single employer? Might you find employers not wanting the hassle with this law and, therefore, using more than one employee to avoid the threshold? Do you see that as a possible backward effect, or don't you think that is a consideration?

Ms. MEEK. I think that could be a negative effect, if they want to get around the paperwork and the compliance, so they use several, instead of one, yes.

Mr. SANTORUM. Would that argue then for a lower threshold? I guess that is the whole point I was trying to make. Now we recognize, and I think everyone recognizes, that $50 a quarter is too low. But if you make it too high, do you then allow folks to employ someone for a period of time, and when they get up to a certain number, switch off and try to employ someone else, so they do not have to deal with the paperwork?

Ms. MEEK. I do not think so. I think that a family that finds a good domestic worker is more apt to keep that person than to jump around. I think that would not be the rule. There might be some exceptions, but most of them would like to keep a good worker. You heard that old cliche that good workers are hard to find?

Mr. SANTORUM. Well, I hope you are right. Thank you.

Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Matsui.

Acting Chairman MATSUI. I have no questions. I would like to thank all four of the members that spoke and have introduced legislation. We look forward to working with you.

Chairman JACOBS. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman, for holding the hearings.

I do not think there is any question, I do not hear any dissent about changing the level here. The question is what is fair. You want to get it high enough to be realistic and you want to have it low enough to protect those people who in the long term need that Social Security benefit protection.

I am really up in the air as far as the figure, because you have got a wide range here in terms of the different bills. Maybe I could ask each of you very quickly to talk about the ranges and why you arrived at those figures, because ultimately this is going to be the critical issue.

Why don't you start, Scott.

Mr. KLUG. We went to CRS and asked them to compute the figure, and so we really depended on their expertise. Again, I think they started with the figure of 1950 and worked their way up to the present time. But I am intrigued that all of us talked to CRS and all came up with different figures, so there is another issue there. [Laughter.]

Mr. SARPALIUS. I did the same thing. Of course, ours is tied to the cost of living and it adjusts every year, as the cost of living increases, so we will not have to keep coming back in the future and dealing with this same problem. I think it is important, whatever your committee decides, that we try to fix the problem and adjust it year by year.

Ms. MEEK. We used the same approach that the others did. We utilized the services of the CRS to come up with these figures. We just felt that these data had been looked at before and, as a result of it, we used that $300 threshold.

Mr. HOUGHTON. I have no other questions.

Chairman JACOBS. It could be that you asked prospectively the CRS before and after lunch one day. [Laughter.]

Mr. Pickle.

Mr. PICKLE. I have no questions. Mr. Chairman, we have got to come face to face with this question, and the testimony by our colleagues I think reflects the general attitude of the members of this committee and the Congress and the public that we have got to do something about it. So I appreciate your testimony.

Chairman JACOBS. Mr. Shaw.

Mr. SHAW. Mr. Chairman, I would like to follow up a little bit on my colleague from Florida's very fine testimony. I think it is important during our deliberations on this that not only do we come up with a threshold that is reasonable for the employer, but also is fair for the domestic worker.

I have filed a bill. I have no great pride in the threshold I have selected. In fact, I will not even throw it out at this particular point, because I think that some of these thresholds, and some of the logic that went behind them is very good and I would be glad to accept most of them.

I think that the annual reporting is something that is also very important.

Getting back to Carrie Meek's testimony, she spoke of the domestic worker who goes to work every day and then finds at the end of usually her, but sometimes his, career that they really have not piled up any Social Security earnings. They probably assumed it was being taken are of. It is important to realize that the employer—I think in most domestic situations the employer pays both sides of Social Security—however, in some situations it will be deducted from that pay.

I think it is also important for us to look at what are we going to do about the backlog. What are we going to do about the maid who has not had the Social Security paid in all of those years and then finds that she is getting close to the end of her working career and really has not gathered any Social Security? What can we do to encourage the employers to pay in the Social Security that is owed to the Government in a situation where most of them did not know they were really liable?

I have filed a bill, Mr. Chairman, that would grant amnesty to domestic employers who have erred in not paying that amount in for the past years. I think that my bill, if it is passed, would encourage the payment and amnesty has to be within a very short period of time after passage of this legislation.

By giving them amnesty to go ahead and pay this amount in, I think it would do a great deal of good for those people who have retired or are nearing retirement and have found that amount has not been paid in for them. I think we would be doing a great service to the Social Security system and I think, even more important, by passage of an amnesty we would be doing a great service to those who find themselves without Social Security, even though under the law they have earned it.

Ms. Meek, could you comment on the feasibility of such a plan and your thoughts with regards to an amnesty?

Ms. MEEK. I would agree with it, Congressman Shaw. There is a lady who lived across the street from me for many, many years who worked for one family for 32 years. She raised all of their children, each one of them. They thought very highly of her. But when she became ill and unable to work, she had nothing to lean on.

So I think that the family this woman worked for cared so much for her, they knew nothing at all about these laws. I am sure, and if they had a chance to pay in the Social Security tax, I think they would for her. But there are others who would be very, very angry to have to come back now and pay those taxes now, even though it would help that domestic worker. So I have sort of mixed feelings about it, apprehension on one end and, of course, the benefit of the economic good of the worker. I think your bill would do a very good thing.

Mr. SHAW. Thank you. The amnesty I am talking about is not in any way relieving them from the liability for the tax. It would simply relieve those who would come forward and pay the tax now from having to come up with the penalties and interest. My intent is to get that Social Security in so it can go to work for us and for the retirees.

Ms. MEEK. As I say, I think that is a good idea.

Mr. SHAW. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Reynolds.

Mr. REYNOLDS. Thank you, Mr. Chairman.

This is an issue, as Congresswoman Meek knows, that is a very personal story for a lot of African-Americans in this country.

I found it rather interesting, when all of this came up, at the kind of surprise that people showed or at least presented. They were surprised about the law. They did not really know that they had to pay these kinds of taxes. I do not believe that. Everyone knows that they get Social Security deducted from their pay and they know other folks get it deducted from their pay. And to suggest that somehow all these professionals, lawyers and doctors and corporate executives had no idea that this law existed and, therefore, should be somehow exonerated is absurd.

I come from a family where my mother and my grandmother were domestic workers. They worked their entire lives. My grandmother died 17 years ago yesterday. She was 69 years old, and had worked her entire life for three families. She was working the day she died. She did not receive any kind of benefits whatsoever during her entire time of working, and to suggest that those families did not know is really begging the question.

Congresswoman Meek, you specifically mentioned the potential problem of domestic workers, and most of them women, particu-

larly African-American women, who may work for a number of different employees and under current law they fall between the cracks. Since the law currently treats each employer and employee relationship separately, thereby effectively denying many of these women their rightful benefits, given that any quarterly earnings from one job may be less than the threshold. My question is should we change the threshold from applying to each job separately to applying to the aggregate pay from such jobs, thereby broadening the scope of the coverage?

Ms. MEEK. That would be a safety net, if you were to use that provision, put some proviso in to require that. That would catch all of these people who are hiring more than one person repeatedly to get around the law. It would help the compliance, I would say yes.

Mr. REYNOLDS. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Camp will inquire.

Mr. CAMP. Thank you, Mr. Chairman.

I commend all of my colleagues for coming here this morning and sharing their testimony. I have a question for Mr. Klug. Your legislation I realize calls for a study of the impact on the Social Security Trust Fund, if any, this might have. Did you have any information, when you were drafting this legislation, to indicate that the streamlining would help with compliance, or is there anything to show that?

Mr. KLUG. No, other than common sense. Frankly, I think an interesting question would be what would happen if everybody suddenly decided to send the forms in. At least in my neck of the woods, I think the major offenses came with people who used folks for incidental work, not full-time domestics like Congressman Reynolds was referring to, and I suspect that the cost of processing all the paperwork would far exceed the money that the Federal Government would take in, and that was really our major sense. You know, that is my assumption, but before we fully put the law in and implement it, I want to make sure that assumption is correct and that we are not causing major problems for Social Security.

Chairman JACOBS. Thank you.

Mr. Brewster.

Mr. BREWSTER. Thank you, Mr. Chairman.

I applaud my colleagues for addressing what is an obvious problem here. Several things come to mind that I would like to visit about. One, I would have to agree with Mr. Bunning that I think the number needs to be higher than you have in there.

In my district, we have a lot of elderly people who under this definition would be an employer. They are 75 or 80 years old and have someone come in 1 day a week to fix a hot meal or clean house for them. Probably these people would have no income tax liability at the end of the year, as they themselves are low income. Would you have them submit both halves of this, if a person exceeded the limit, or how would you address that?

Mr. SARPALIUS. Are you asking if they exceeded whatever the threshold is for the quarter?

Mr. BREWSTER. No, for the year, on an annual basis.

Mr. SARPALIUS. Sure they would.

Mr. BREWSTER. So the employer would be responsible for both halves. Do you have enforcement procedures to ensure that if the person withholds on a monthly or weekly basis and the employee does not reach that threshold that the money is returned to that employee, assuming they would be called an employee?

Mr. SARPALIUS. I think all of our legislation—I have not read my colleagues' legislation, but I think all of us are basing it on a quarterly basis. If that individual has been paid minus $245, everybody else is around $300 or more, whatever number you set, once you reach that point then you have got to pay into Social Security.

Mr. BREWSTER. What I am saying is if you collected it out of the employee's wages each time they were there and they did not reach whatever threshold is set, we have to have something to make sure they pay it into the fund or refund it to the employee, one or the other. Enforcement is the whole key, and I think it is extremely important that it be done directly, because we do have a lot of elderly people out there that employ somebody once or twice a week or on a monthly basis that could certainly hit the threshold, and many of them are low-income themselves.

Ms. MEEK. If I may address that, I think much of this would be due on the information that that potential employee would know. That is, if we get the information out to them and they are naturally in that category, I think they could say to that employer, look, this isn't the way we do it, the law is this. If they know their rights, I think they will insist on it.

Mr. BREWSTER. I agree. I think it is very important that it would be up to them and that enforcement procedures be in place to make sure that people do not withhold money and then not submit it and the employee lose out in the deal.

Ms. MEEK. Right.

Mr. BREWSTER. Thank you.

Chairman JACOBS. Mr. Grandy.

Mr. GRANDY. Thank you, Mr. Chairman.

I was late arriving, so I did not hear your opening statement, Mr. Chairman, and I unfortunately did not hear Mr. Sarpalius' statement, either.

Two things occur to me, as we address this problem. One is—and if the committee knows, I wish they would let me know—what is the revenue exposure of going to $300 on an annual threshold? How much do we lose, I assume out of the Social Security Trust Fund, if we raise the threshold? Does anybody know at this time? Probably nothing? You wouldn't lose anything, if you went to $300?

But it seems to me that the highest you raise the threshold——

Mr. BUNNING. Mr. Grandy, according to the IRS numbers, it is $31 million, we would be in a plus, rather than——

Mr. GRANDY. How much are we talking about, if we have the $300 threshold, according to the IRS numbers? You would add $31 million to the trust fund?

Mr. BUNNING. Yes.

Mr. GRANDY. Does it stand to reason, then, if you raise the threshold higher, you add more money to the trust fund? [Laughter.]

It is a crazy idea, but it——

Chairman JACOBS. It is a matter of compliance, I think, that they figure. If you are not getting anything now and you get something then, you are ahead.

Mr. GRANDY. All right. I am not going to argue about what the correct threshold is, because I do not profess to know. I guess I would ask about timing. I did not hear any of you say when you wanted to see this enacted. I would assume that the major train that is leaving this station is going to be the economic stimulus package. I would have to agree that, based on your testimony, Ms. Meek, this would be a significant economic stimulus for employers and employees alike in that category.

Having said that, would you be amenable to attaching this to the President's economic stimulus package, and would you consider making it retroactive to the first of this year, the way he has made the increases in the marginal rates retroactive this year? In other words, employers would be under the threshold as of January of this year.

Ms. MEEK. I have not studied the impact of such a measure, so I can only say conceptually it sounds good, but in terms of how it would affect the President's package, I have not studied it, so I would like to say to you that I could bring you that information later, but I cannot at this point.

Mr. GRANDY. I am not trying to put you on the hook here. This has just occurred to me as we were talking about this. If Jim Bunning is right and we are adding $31 million to the package, I cannot see how the President would be opposed to that.

Do you have any thoughts on this, Bill?

Mr. SARPALIUS. I think it is a great opportunity. I think it fits right in with what the President is trying to achieve through his economic package. The public is certainly aware of the problem. Right now it is on the minds of many people and it is our job to try to solve it, and if there is an opportunity there to solve it, I think we ought to do it.

Mr. GRANDY. Scott.

Mr. KLUG. As someone who has reservations about the President's overall stimulus package, I would just as soon see it introduced and passed on its own. For those of us who have been fighting for it, it would guarantee we could vote for it that way.

Mr. GRANDY. I share your thoughts, but I think that if we are going to do this and knowing the way this committee works, there is little likelihood of this moving out of one or both committees individually by itself. I may be wrong on this, but when there are major legislative initiatives supposedly under the guise of stimulus, I think this argues for putting it into the package.

There are many things in the President's package, I might say parenthetically, that I not only support, but have introduced myself. Whether or not I vote for the package depends on what the aggregate numbers are relative to revenue expenditures versus spending cuts. But I do think the timing is of the essence here, if for no other reason than to preserve the integrity of the Attorney General's office.

Thank you, Mr. Chairman.

Chairman JACOBS. To underscore what Mr. Bunning said, I think that the IRS estimate is that people who were paying $51.30 a

quarter to teenage baby-sitters were pretty astonished to hear the news of the past few months and they might even be in the position to paraphrase the fellow who said, "Two months ago I couldn't even spell employer and now I are one." So it has probably come as a shock to an awful lot of people.

Mr. McDermott.

Mr. MCDERMOTT. I guess my only comment about this—I personally think we ought to keep this figure fairly low. If you figure this out, $75 a quarter amounts to $25 a month. If you make it much higher than that, you are going to have people saying, well, I will hire two people and I will not have to pay anything. I think the $300 annual limit gets you out of baby-sitters and still gives an opportunity to protect domestic workers.

There are millions of people in this country who live only on their Social Security, and I personally think that Congresswoman Meek's idea about keeping it low is very important, because some people work for three or four employers. If you try to imagine living on $300 a month, which is what some of these people are making as domestics, it simply is not fair to say in their older years that you do not get any Social Security, so I think we have to protect them.

Acting Chairman MATSUI. Would the gentleman yield on that?

Mr. MCDERMOTT. Certainly.

Acting Chairman MATSUI. I would like to follow up, because I think the gentleman is absolutely correct: If you index the $50 from 1951 to 1993, as the CRS report says, that would make the quarterly threshold $439. If you assume a person has five employers and he earns that amount every quarter, he would have an annual income of $8,780. At the same time that person, if it were apportioned five ways equally, would not qualify for Social Security benefits or unemployment benefits and that would be absolutely, as Mr. Reynolds has said, absurd. It just would not make any sense.

We do have to be very sensitive to the fact that we could damage employee benefits if we are not careful on this. At the same time, the threshold does have to be raised. You do not want to pick on baby-sitters, but you do want to get domestic workers into the system, because they have valuable rights that have to be protected.

I thank the gentleman for yielding.

Chairman JACOBS. I think the point ought to be made, too, that under all these proposals you would have an annual calculation, and under present law, if you earn so much as $590 in a calendar year as an employee and the taxes were paid, you would be credited with one quarter of coverage for Social Security benefits.

Mr. Crane.

Mr. CRANE. Mr. Chairman, to elaborate on the point you just made, my understanding is that $590 figure is for people making minimum wage, is it not, that you have to make $590 in a quarter before you pay Social Security taxes?

Chairman JACOBS. I am sorry, would you repeat that?

Mr. CRANE. On the minimum wage, is it not correct that you have to make $590 in a quarter, being paid minimum wage, before you have to file Social Security returns?

Chairman JACOBS. The $590 is the threshold to get credit for it. Right now $50 is the threshold for paying FICA taxes, so if you pay between $50 and $590, you just spit in the wind.

Mr. CRANE. I mean for people who are not earning more than the minimum wage. I saw that figure and that is why I am curious as to how that——

Chairman JACOBS. Are you wondering where the $590 came from, is that it?

Mr. CRANE. Yes, I am curious why there is that——

Chairman JACOBS. In 1978, they did an uptick on the $50 for eligibility, and for reasons best known to somebody besides me, they came up with about a $200 figure, and since then it has been raised annually to $590. Now, $590 does not track precisely with the wage index since 1950. It is in excess of it. As I understand it, about $470 does track perfectly with the wage index since 1950. There was symmetry in 1950. It was $50 and $50, $50 you pay and $50 you get credit for, and that disparity now is at least embarrassing to the Government.

Mr. CRANE. I was going to say I have got seven daughters and they have done a lot of baby-sitting through the years and you do not have to babysit more than a couple of evenings and you get that $50 threshold, and it just strikes me as kind of absurd.

Chairman JACOBS. They are making good money.

Mr. CRANE. They were not doing that as a career. That was to pick up their petty cash.

Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Kopetski.

Mr. KOPETSKI. Thank you, Mr. Chairman.

I commend you and Mr. Matsui for holding these hearings. I have just a couple thoughts and questions. One, I think it is more important that we figure out how CBO scores this and how the IRS scores this, and I think we need to determine that quickly.

Second, I think it is an excellent idea to add this to the President's economic package. Third, I guess my big area of concern in all of this is when this goes into effect and the amnesty-related issues.

It seems to me that if we do not address the amnesty issue, we are not going to get very far along in compliance, not only from the employer's side, if you will, but also from the worker's side, who all of a sudden may be calling up some of these folks saying, you know, I might have forgotten to add that as income to my income tax statement and so I really don't want you to kind of start filling these little forms out. It seems that we just need a whole fresh start in this country in this whole area.

I know the statute of limitations generally is 3 years in tax matters. The IRS could go back and start auditing people back the past 3 years on these issues, whether it is the employer or the worker. So I think we ought to just tell America, look, we are going to start over on this, you are all going to have to do it, we are going to have decent dollar amount rates, we are not going to throw anybody in prison, this is not going to trigger audits for anybody, and we are all going to start fresh and start paying a decent amount on this and go forward from here. Otherwise, we are not going to boost the

compliance rate up and do something 75 or 80 percent, which ought to be adequate, pretty good for Government, anyway.

So those are my biggest areas of concern in this, Mr. Chairman.

Chairman JACOBS. Mr. Levin.

Mr. LEVIN. Thank you. I have no questions. Thank you.

Chairman JACOBS. Thank you for your contribution to our agenda. [Laughter.]

We thank our colleagues for being patient enough to come and testify and submit to questions.

Chairman JACOBS. Our next panel is, from the Social Security Administration, the Acting Commissioner, Louis Enoff, and from the Department of Labor, Mary Ann Wyrsch, and from the Internal Revenue Service itself, Mr. Marshall Washburn.

Mr. Enoff, you may proceed in your own fashion. Welcome back to the committee. It is always a pleasure, usually a pleasure.

STATEMENT OF LOUIS D. ENOFF, ACTING COMMISSIONER OF SOCIAL SECURITY, SOCIAL SECURITY ADMINISTRATION

Mr. ENOFF. Thank you, Mr. Chairman, Mr. Matsui and distinguished members.

It is a pleasure to be here and I, too, commend you for convening this hearing on a subject that affects millions of household workers and their employers. With your permission, I will submit my entire statement for the record and summarize, to keep it brief this morning.

As has already been well stated this morning, I think there are four very important questions that we have to grapple with in this area, and these are not in priority order: Number one, how do we address the problem of noncompliance with wage reporting requirements; number two, how do we insure that domestic employees get the Social Security protection that they have legitimately earned through their hard work; how can we streamline and simplify the administrative requirements that apply to employers of domestic workers; and, finally, what about past violations?

We obviously have to be very concerned about estimates that as few as 25 percent of all employers report wages and pay the appropriate payroll taxes for domestic employees. It needs to be said, as well, that this is not a new issue. Congress recognized over 40 years ago that domestic employees have a compelling need for Social Security coverage, because they tend to have relatively low wages and no pension plan. Therefore, coverage was extended to these working Americans in 1951.

Today, however, because so many are not complying with wage reporting laws, thousands of men and women could be deprived of valuable financial protection, retirement, disability and survivors' benefits that Social Security provides and that they have earned. Because a worker needs some recent work to qualify for Social Security disability insurance, domestic employees may lose that protection if their wages are not reported. They would be in desperate straits, if a serious illness or injury left them unable to work, as Representative Meek so testified already.

Or in the event of an employee's death, his or her dependents could be denied Social Security survivor benefits. Of course, the employee whose wages are not reported may lose eligibility for So-

cial Security retirement benefits or may receive benefits which are far less than those to which they are entitled. This could be a very difficult retirement situation for people who have worked very hard all of their lives.

Now, we at Social Security consider this a serious problem and we have been conducting several public information activities to heighten awareness of wage reporting requirements. For example, we do provide articles on wage reporting in the Social Security Courier, which is a publication that is widely distributed and reprinted by advocacy groups and media outlets. We provide regular newspaper columns, as well, and releases through our 1,300 local Social Security offices to the media in those areas.

We have been working with the IRS in holding seminars for employers on their obligations to report wages. Many of these seminars are conducted for small employers, including people who are domestics. In 1992, our two agencies conducted over 500 such seminars.

And, as you are all very well aware, SSA produces the personalized earnings and benefits estimates statement or what we call the PEBES, which allows employees to check the accuracy of their earnings records to see what their estimated benefits will be. We believe that the PEBES can help encourage all employees, including domestic workers, to correct any discrepancy in their earnings record early, when it is easier for us to verify their employment.

But as helpful as these measures are, clearly, the noncompliance rate requires new approaches. We welcome the opportunity to work with your subcommittees in addressing this problem. We completely agree that the coverage provisions related to domestic employment must be reviewed. These provisions have been in effect since 1955, and elements of current law are clearly out of date.

We plan to consider various options for determining what type of work should be appropriately covered by the provisions, as well as ways to simplify reporting. I look forward to working closely with your subcommittees on this issue. We share the same goals, to protect the rights of household workers with Social Security coverage, to gain widespread compliance with the law, and to make certain that requirements placed on employers are fair, logical and reasonable.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF LOUIS D. ENOFF, ACTING COMMISSIONER OF SOCIAL SECURITY

Mr. Chairmen and Members of the Subcommittees:

I welcome the opportunity to be here today to discuss Social Security coverage and wage reporting for domestic employees and to examine proposals to simplify and streamline the payment of employment taxes for domestic workers. I want to commend the subcommittees for holding a hearing on this important and timely subject--one that affects millions of household employees and their employers.

The recent flurry of publicity has focused attention on some important questions about domestic employment--questions which now confront the Congress and the Administration. One of the most pressing questions is how best to address the widespread problem of noncompliance with wage reporting requirements, so that domestic employees get Social Security credit for their covered work and have the valuable protection that Social Security provides.

But I think there are other questions in addition to the noncompliance issue that we need to address as well. For example, we need to consider whether the current $50 test for coverage of domestic employment, which has been in effect since 1951, needs to be updated. I also agree with your assessment that we need to consider proposals that would simplify and streamline the administrative requirements that apply to employers of domestic workers.

Before I discuss these questions, however, I want to begin by briefly discussing the history of Social Security coverage of domestic employment and current employer responsibilities for reporting domestic earnings. Then I will discuss the reasons for and consequences of noncompliance for domestic workers who attempt to qualify for Social Security benefits, as you mentioned in your press release.

History of Coverage for Domestic Employment

Turning first to the history of coverage, it is interesting to note that the questions now facing us were foreseen decades ago. In fact, the treatment of domestic employment has been of concern since the Social Security Act was signed into law in 1935. At that time, the Committee on Economic Security--which authored the original Social Security Act--recommended covering wages paid to domestic employees.

However, there were two concerns which caused domestic employment to initially be excluded from Social Security coverage. One concern was that it would be difficult to obtain accurate wage reports from employers, many of whom had no business experience and were thus unfamiliar with wage reporting. The other concern was that it would be difficult to enforce collection of taxes from a large number of employers, each of whom employs only a small number of employees.

Counterbalancing these concerns, however, was a recognition that domestic employees have a particularly compelling need for Social Security coverage, because they tend to have relatively low wages and no pension plan. Therefore, beginning in 1951, coverage was extended to domestic employees.

To minimize the anticipated reporting problems, coverage for these workers was made subject to a wage and time test. Under the 1951 test, a domestic employee was covered only if the employee was paid $50 or more in a calendar quarter, which then was a measure of significant employment for all employees. In addition, the domestic employee must have worked for the employer for a minimum of 24 days in the quarter. For domestic workers with more than one employer, the test was applied separately to each employer.

Within a few years, though, the 24-day part of the test was found to be "unnecessary and complex." Beginning in 1955, then, Congress dropped the 24-day requirement in order to simplify the test and to expand coverage to additional domestic workers. Except for this one change, the coverage test for domestic employees is the same today as it was when coverage was first extended.

Current Employer Responsibilities

Now let me briefly describe the employer responsibility for reporting domestic earnings and the roles the Social Security Administration (SSA) and the Internal Revenue Service (IRS) play in the process. If domestic employment meets the $50 coverage test, it is the employer's responsibility to report those wages and to remit the appropriate Social Security taxes, including Medicare taxes.

To fully understand the employer's reporting requirements, Mr. Chairmen, it may be helpful to clarify the different roles of SSA and IRS. SSA is responsible for crediting wages to the employee's earnings record, so that any Social Security benefits eventually payable reflect an employee's total covered earnings. IRS, on the other hand, has responsibility for enforcing compliance with employer reporting requirements, and for collecting Social Security taxes.

Therefore, the employer must report the wages paid to domestic employees--and remit the employer and employee portions of the tax--to IRS. This must be done on a quarterly basis, using Form 942, the "Employer's Quarterly Federal Tax Return." In addition, the law requires the employer to furnish the domestic employee with a form W-2 showing the total wages and Social Security taxes paid in the year. And, to allow SSA to credit the employee's earnings for Social Security purposes, the employer must submit a copy of the form W-2 to SSA.

Reasons for Employer Noncompliance

Despite these requirements in the law, however, many domestic employers fail to report their employees' wages. In fact, IRS has recently estimated that as few as 25 percent of all employers report wages, and pay the appropriate payroll taxes, for their domestic employees.

There appear to be several reasons for this low rate of compliance. For example, some domestic employers may be unaware of the requirements of the law. This is especially likely for those who hire help only sporadically--such as a homeowner who occasionally hires a neighborhood teenager to mow the grass.

On the other hand, although some domestic employers are aware of the law, both they and their employees may not wish to incur the expense of paying the Social Security tax. In other cases, an employee--who may be receiving very low wages--may ask the employer not to withhold Social Security taxes. They may believe that they are unable to afford the employee share of the tax, because of the pressure of their everyday living expenses.

In addition, both employer and employee may want to prevent the Government from discovering an undocumented worker. Or, the employee may wish to remain eligible for payments under a government welfare or benefit program, and the employer may agree not to report the wages because he needs the employee's services. This category of employee may include some who get Social Security retirement benefits, and wish to avoid the retirement earnings test.

Finally, employers may be discouraged from reporting wages because they are confused regarding the necessary forms and procedures, because they are reluctant to deal with the Government, or because they regard the reporting requirements as unduly burdensome.

SSA's Procedures for Crediting Unreported Earnings

Noncompliance often becomes apparent only when the domestic employee comes to SSA to file for benefits. All too often, that is the first time an employer's failure to report wages comes to light. This delay means that SSA is called upon to reconstruct a life-long earnings history for a domestic employee whose earnings were not properly reported--a time-consuming, labor-intensive, and sometimes frustrating process.

However, even if many years have elapsed since an employer failed to report a worker's earnings, SSA will correct the record if acceptable evidence of the unreported earnings is available. Indeed, our claims representatives (CRs) are trained to take steps to ensure that every applicant's earnings record is complete and accurate.

For instance, as part of the benefit application process, we review the Social Security earnings record with each worker and we ask the worker to carefully examine the amounts recorded to see whether they appear correct. SSA's modernized claims system, which uses state-of-the-art computer technology to help our field employees do their work more effectively, helps in this respect. If a worker's earnings record shows a year of below-average earnings, the system flags the record to remind the CR to document the explanation for the irregular pattern of earnings.

If a person filing for benefits believes that earnings have not been reported, and the unreported wages are needed to establish the person's eligibility for benefits or to increase the amount of the benefit, the CR attempts to contact the employer. If the employer agrees that he employed the domestic employee, we then ask the employer to sign a statement indicating the amount of wages paid and the periods in which the worker was paid. If the employer signs such a statement, we add these wages to the worker's earnings record and consider them in determining the worker's eligibility for or amount of benefits.

Sometimes the employer is unwilling to sign a statement, or the employer has died or cannot be located. In these situations there are several other forms of evidence that we use to establish a worker's unreported wages, such as tax returns.

If these documents are unavailable, we ask the worker for other evidence that may be available, such as pay slips or other records kept by the worker. As a last resort, we can establish wages based on statements from coworkers who knew of the employment relationship, when it occurred, and, in general, the amount earned by the worker.

If SSA establishes additional wages for a worker, we inform the IRS, which is responsible for the collection of unpaid Social Security taxes. The liability for unpaid taxes--including the employee's share of the Social Security tax, interest, and any penalties--rests solely with the employer.

I would emphasize, Mr. Chairmen, that while SSA works very hard to establish a person's unreported wages, our success depends on the availability of acceptable evidence. If the unreported wages occurred many years in the past, we often find it very difficult to find sufficient evidence of the unreported wages. Thus, our best efforts are no substitute for timely compliance by employers in reporting the wages they pay to their employees.

Consequences of Noncompliance

To properly recognize the potential loss of benefits due to noncompliance, one must remember that Social Security is not just a retirement program; it is a package of retirement, disability, and survivors protection. Because a worker needs some recent work to qualify for Social Security Disability Insurance, domestic employees whose wages were not reported may never qualify for this protection. Or, they may lose protection quickly if no wages are credited to their earnings record for some time. In addition, in the event of the employee's death, his or her dependents could lose valuable Social Security survivor benefits.

Finally, of course, the employee may lose eligibility for Social Security retirement benefits. Or, those benefits may be much lower than they otherwise would have been. Thus, when employers fail to report the wages of a domestic employee, they are not just violating a provision of the law--they may also be depriving domestic employees of future Social Security benefits.

And, in a broader sense, it is also likely that diminished Social Security protection for domestic employees places an additional burden on Federal, State, and local government "needs-based" programs, such as Supplemental Security Income, Medicaid, food stamps, and AFDC. This is especially true because domestic workers are often among the poorest in our society.

There have been a number of newspaper articles describing the devastating circumstances of some domestic workers whose employers did not report their wages. And, the CRs in our field offices have reported a number of unfortunate situations as well.

Some domestic employees do recognize the value of Social Security protection and resort to reporting their earnings as self-employment income, because their employers are unwilling to report their earnings and pay the Social Security taxes. A recent Washington Post story on the underground domestic work force quoted some domestic workers who have routinely reported themselves as self-employed for many years. These workers paid the Social Security self-employment tax on their earnings--which is considerably higher then the employee share of the Social Security tax--because they wanted the Social Security protection that the law is designed to give them. Unfortunately, their employers simply refused to report them as employees.

SSA Efforts to Improve Compliance

Recognizing the potentially devastating loss that can occur when wages paid to domestic employees are not reported, SSA conducts a number of public information activities on wage reporting to heighten public awareness of the reporting requirements of the law.

For instance, we issue periodic news releases which are included in the Social Security Courier, a camera-ready publication that is widely distributed to advocacy groups and media outlets for reprint. We also prepare a package of newspaper columns and articles, called "Monthly Information Packages," which are distributed to all of SSA's 1,300 local offices, and are used to provide news releases to local media. I would note that an article on reporting of wages for domestic employees appeared as recently as the June 1992 Monthly Information Package. Additional articles on this topic will appear in both publications this month.

In another effort, SSA--working with IRS--holds seminars for employers on their obligations to report wages. Many of the seminars are conducted for small employers, including people who hire domestic employees. In fact, Mr. Chairmen, SSA and IRS co-chaired approximately 500 such seminars for small employers in 1992 alone.

As you know, Mr. Chairmen, besides these general public information activities, SSA also produces the Personal Earnings and Benefits Estimate Statement (PEBES), which allows employees to check the accuracy of their earnings records and to see what their estimated Social Security benefits will be.

We believe the PEBES can help encourage all employees--including domestic workers--to correct any discrepancies in their earnings records early, when it is easier to verify employment. In addition, because it shows the estimated amount of each person's disability, retirement, or survivor benefits, employees can more readily understand that Social Security is not simply a tax on earnings--it is also valuable protection.

The Need for New Approaches

Despite our efforts, Mr. Chairmen, it is clear that noncompliance with the reporting requirements of the law is a serious problem for domestic employees. This brings us to the question of how we can improve that compliance. Since compliance and enforcement problems have been of concern for decades, and since noncompliance may be as high as 75 percent, it is obvious that what we have tried in the past has simply not worked.

Ironically, recent media attention to the issue--and holding this hearing--may increase compliance by making more employers aware of the requirements. But the publicity will not improve compliance among those who deliberately choose to violate the law. To correct the latter situation, we think a new approach is needed.

Your press release announcing this hearing invited comments on the domestic employment provisions of H.R. 13 and presented several other suggestions for improving the domestic coverage provisions.

We believe H.R. 13 is a positive step in addressing what has become a serious problem. We believe it would both simplify the reporting requirements for domestic employment and improve employer compliance.

We completely agree that the coverage provisions related to domestic employment must be reviewed. These provisions have been in effect since 1955, and elements of current law are clearly out of date. We plan to consider various options for determining what type of work should be appropriately covered by the provisions, as well as ways to simplify reporting.

While I am not prepared to offer more detailed reactions and specific recommendations today, I look forward to working closely with your subcommittees on this issue.

Chairman JACOBS. Thank you, Mr. Enoff.
Ms. Wyrsch.

STATEMENT OF MARY ANN WYRSCH, DIRECTOR, UNEMPLOYMENT INSURANCE SERVICE, EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Ms. WYRSCH. Chairman Jacobs, Chairman Matsui, and members of the subcommittees, I am pleased to appear before you today to discuss the issue of unemployment taxes as they relate to the coverage of domestic workers.

For the past 15 years, the Federal Unemployment Tax Act has required coverage of domestic workers by employers who hire such workers and pay them at least $1,000 in a calendar quarter. A few States, especially those that covered domestic workers prior to being required to by Federal law, have lower wage thresholds—typically half or less of the quarterly payroll cited in the Federal law.

While State employment security agencies administer the State law in terms of determining which employers are liable for State unemployment contributions or taxes, and which claimants are eligible for benefits, the Internal Revenue Service is responsible for collecting FUTA taxes from employers who hire domestic workers.

These employers in many cases do not view themselves as traditional employers in the labor market, and often are not aware of the filing requirements for domestic workers. Therefore, it is understandable that compliance rates for reporting and paying taxes on the wages paid to domestics is less than that for employers of other workers in general.

You have asked us to address the impact on a domestic worker's qualifications for unemployment benefits of the failure by an employer to pay State or Federal taxes. Generally, a domestic worker would be eligible for benefits, if he or she had recent and substantial work history. Even if the employer had not paid taxes in advance on behalf of the worker, the worker would receive benefits if otherwise eligible.

In the case of State taxes, State employment security agencies would simply audit the noncomplying employer and determine the amount of State taxes due and assess the appropriate penalties and interest. Because unemployment benefits are based on recent work history, it is not very difficult for State employment security agencies to locate a delinquent employer and collect the taxes due.

The SESAs have a great deal of experience in the application of State law and are fully aware of the problems associated with coverage of domestic service. As to Federal employment taxes, we defer to the IRS, because it has responsibility for determining the employer liability and collecting those associated taxes.

Among the provisions of H.R. 13, the Tax Simplification Act of 1993, which your committee is considering, is a provision that would authorize the Secretary of the Treasury to enter into an agreement with any state to collect, as an agent of the State, the State's unemployment tax. Funds collected by Treasury under this provision would be deposited in the State's account in the Unemployment Trust Fund. While the Treasury Department may have

other views on this provision, we would have no objection to it as long as it would remain optional to the States.

This completes my prepared statement. I will be pleased to answer any questions you have.

Chairman JACOBS. Thank you, Ms. Wyrsch.

Mr. Washburn.

STATEMENT OF MARSHALL V. WASHBURN, COMPLIANCE 2000 EXECUTIVE, INTERNAL REVENUE SERVICE

Mr. WASHBURN. Mr. Chairman and members of the subcommittees, I would like to thank you for the opportunity to talk about the tax issues related to household employment. My testimony today focuses on the current rules and compliance issues relating to the rules.

As you know, the Federal tax rules applicable to household employment have been widely misunderstood for a number of years. To clarify some of the misunderstanding, I would like to briefly summarize some of the Federal tax rules pertaining to household employment.

First, if a household employee earns $50 or more in cash in any calendar quarter, the employer is responsible for Social Security and Medicare taxes, FICA. The employer must file a form 942, employer's quarterly tax return for household employees for that quarter, and must transmit both the employer's and the employee's share of FICA. In addition, by January 31 of the following year, the employer must furnish the household employee and the Social Security Administration a form W–2.

Second, if the aggregate cash wages paid to all household employees in any calendar quarter of the current or preceding year is $1,000 or more, the employer is also liable for the payment of Federal unemployment taxes (FUTA) on the first $7,000 of domestic wages paid to any household employee during the year. Although the FUTA return, form 940 or 940EZ, is filed annually, the tax is required to be deposited generally in quarterly installments. No deposit is required, however, until the amount due exceeds $100. Employers subject to FUTA may also be required to pay State unemployment taxes, most of which are creditable against Federal FUTA.

Third, although employers are not required to withhold income tax for household service in a private home, the employer and the employee can enter into a voluntary withholding agreement. This is truly voluntary—that is, both parties must agree. Of course, if income tax is withheld, it must be shown on the form W–2 and remitted to the IRS.

There are two basic questions the IRS generally receives regarding domestic workers: (1) which workers provide "domestic services," and (2) are these workers employees or independent contractors. Let me address each of those questions in turn.

The special FICA, FUTA and income tax withholding rules I have just described all apply to employees who provide "domestic service" in a private home or apartment of their employer. Treasury regulations generally indicate that services of a household nature provided, for example, by cooks, governesses, housekeepers,

maids, baby-sitters, gardeners, handymen and so forth are "domestic service" subject to the above rules.

In almost all cases, workers who perform these services will in fact be employees of the person in whose home they are performed and not independent contractors. The IRS uses the same 20 common law factors used by the Social Security Administration to determine whether a worker is an employee or an independent contractor. These factors are used to determine whether the person for whom services are performed has the right to direct and control the performance of the services. In the case of domestic services, the person in whose home the services are performed is almost invariably the person who has that right.

In some instances, another person, such as an operator of a commercial housecleaning business, has this critical right to direct and control. In those cases, the household worker is an employee of the commercial service. The commercial service, not the homemaker, is then responsible for the employment taxes. The IRS's published guidance, applying the common law 20 factor test, has generally treated housekeepers, maids and baby-sitters as employees of the homemaker, except in those cases where a commercial service has been involved.

The FICA, FUTA and W–2 reporting and payment obligations described above apply, regardless of household employee's immigration status, or whether the employee has a Social Security number. If the household employee has applied for a Social Security number, the employer should indicate "applied for" in the space for the employee's Social Security number on the W–2 form. If no number has been applied for, employers should file the form W–2, give the name and address of the employee, but leave the space for the Social Security number blank.

Finally, I would like to point out that the statutes of limitations with respect to employment taxes apply only if a return for the period is actually filed. Thus, if an employer does not file the required employment tax returns for any period for which the employer has such an obligation, there is no time limit on the IRS's authority to assert the unpaid employment taxes. A household employer's tax liability, therefore, can extend back over the household employee's entire working career. This liability includes the obligation to pay both the employer's and the employee's share of the FICA.

Turning now to compliance, each year the IRS receives about 1.4 million quarterly forms 942. Since taxpayers who employ household workers on a regular basis would have to file four forms 942 for the year, the 1.4 million 942s we receive would suggest that only about one-half million households report household wages.

Occupational data from the Bureau of Labor Statistics for 1992 indicates that there are about 1.13 million workers employed in private homes. This is in addition to workers employed through agencies and commercial services. Many of these 1.13 million employees work for two or more household employers during a given time period. For example, it is quite common for a cleaning person to work for as many as five different households in a week. Based on this estimate, we estimate that there are several million households that should be reporting to the IRS.

There are a number of factors contributing to this noncompliance, of course, one of the most significant of which is the low FICA threshold of $50 per quarter. Under the current rules, for example, if a taxpayer pays a household employee more than $50 in a calendar quarter, the taxpayer is required to file a form 942 and transmit FICA taxes for that quarter.

In addition, at the end of the year, the taxpayer is required to file a form W–2 for that employee. The $50 per quarter FICA threshold was intended as a "casual labor" exception that would exempt household employers who paid minimal household wages from the obligations previously described. The failure to increase the $50 per quarter threshold since it was enacted in 1950 has caused the exception to become virtually meaningless. As a result, almost any household employment will exceed that threshold.

A second factor contributing to noncompliance is the burden imposed on household employers. A taxpayer employing a full-time nanny must annually file five separate Federal tax forms, four form 942s and one form 940. This taxpayer will also have to make between five and eight separate payments of FICA and FUTA, four quarterly FICA payments with the 942s, and up to four quarterly FUTA deposits. Many would say that this is an extraordinary burden, given the relatively small amounts of actual tax involved.

Another contributing factor to noncompliance is the cost to the household employer. In addition to the tax, many household employers will pay both halves of the FICA tax out of their own pocket. Also, many employees will need additional compensation to cover their income tax liability on reported wages. Because of these items and a potential FUTA liability, complying with the rules could increase a noncompliant household employer's costs by between 15 to 25 percent.

A fourth factor contributing to noncompliance in this area is the unwillingness of some household workers to have their wages reported. Recently, there have been a number of media articles showing household workers refusing to accept checks, provide Social Security numbers or to have taxes withheld. Some reasons for this are (1) fear of exposing illegal immigration status, (2) concern over the impact of the household wages on the workers' eligibility for welfare, disability or unemployment benefits, (3) a desire not to have their compensation subject to income tax or reduced by the employee's share of FICA, and (4) a general reluctance to have their employment documented.

A fifth factor contributing to the noncompliance is household employers' lack of awareness of these obligations. Few individuals who hire baby-sitters or cleaning persons on an intermittent basis think of themselves as an "employer," even though the IRS tax forms and plain language publications clearly indicate that they are employers and are required to pay employment taxes on wages paid to baby-sitters and cleaning persons.

However, it is difficult to get individuals who do not think of themselves as employers to confront these rules and reach the appropriate conclusion, that is, in most cases they are in fact employers with employment tax obligations. IRS efforts to educate the public on this matter are hampered by the fact that there is really no simple way to identify potential household employers.

A sixth and final factor contributing to noncompliance is the passive nature of not complying. It is easy for taxpayers not to comply. They merely ignore the rules.

Now, what is the IRS doing about noncompliance? As I have outlined, there are many potential causes of noncompliance, not the least of which is the burden and complexities of the rules.

The service has adopted a major strategy to improve compliance with all tax laws, including employment taxes. Under this strategy, known as Compliance 2000, we recognize that the tax system works best when taxpayers understand what is expected of them, when the burden of meeting their tax obligations is minimized, and when they are given information and assistance that enables them to comply.

Traditionally, our activities have been geared toward correcting noncompliance primarily through the use of enforcement. Under Compliance 2000, enforcement will remain a key tool, but we are using a much broader range of tools, such as education, outreach, improved forms and publications that are tailored to remove barriers and obstacles to compliance facing specific groups or segments of taxpayers.

Some activities that we currently have under way include working with a number of taxpayer groups, trade associations and employee associations, to identify the barriers, clarify the rules and otherwise facilitate compliance. We are using technology from our tax systems modernization efforts to gather data and identify groups of taxpayers that may seem likely to hire, for example, domestic employees and then provide them with outreach and educational materials to help them better understand their obligations.

Again using technology and experience from our Compliance 2000 activities, we are identifying segments of the population with common characteristics, common compliance problems to better again focus our outreach efforts.

We are developing bilingual forms to help individuals who speak English as a second language comply with their tax obligations.

Finally, the IRS nonfiler strategy, which is another part of our Compliance 2000 efforts, provides mechanisms for noncompliant taxpayers to come forward and pay their taxes and get into the system, including employment taxes. As part of this strategy, we have liberalized the procedures for making installment payments of delinquent tax, and we are taking a much more positive look at offers in compromise.

I would also like to just comment, Mr. Chairman, that enforcement policy generally calls for our revenue agents and revenue officers to secure current year delinquent returns and 6 prior years of delinquent returns, depending on the facts in the case. As I mentioned earlier, the statute of limitations is open completely, but our policy is normally 6 years. That can vary, depending on the facts.

In conclusion, I would like to thank the subcommittees for this opportunity to discuss employment taxes for household workers. We are cognizant of the current tax burdens imposed on household employers, and we share your desire to reduce those burdens. We are also cognizant of the noncompliance in this area and the need for changes to eliminate the causes of noncompliance. We look forward to working with you and your staff to develop appropriate solutions.

[The prepared statement follows:]

STATEMENT OF

MARSHALL V. WASHBURN
COMPLIANCE 2000 EXECUTIVE
INTERNAL REVENUE SERVICE

BEFORE THE
SUBCOMMITTEES ON SOCIAL SECURITY AND HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS

March 4, 1993

Mr. Chairman and Members of the Subcommittees, I would like to thank you for this opportunity to talk about the tax issues relating to household employment. My testimony today focuses on the current rules and compliance issues relating to these rules.

Present Law

As you know, the Federal tax rules applicable to household employment have been widely misunderstood for a number of years. To clarify some of the misunderstanding, I would like to briefly summarize some of the Federal tax rules pertaining to household employment.

First, if a household employee earns $50 or more in cash in any calendar quarter, the employer is responsible for FICA (Social Security and Medicare Taxes). The employer must file a Form 942, Employer's Quarterly Tax Return for Household Employees, for that quarter and must transmit both the employer's and the employee's share of FICA. In addition, by January 31st of the following year, the employer must furnish the household employee and the Social Security Administration a Form W-2.

Second, if the aggregate cash wages paid to all household employees in any calendar quarter of the current or preceding year is $1000 or more, the employer is also liable for payment of FUTA (Federal Unemployment Taxes) on the first $7,000 of domestic wages paid to any household employee during the year. Although the FUTA return, Form 940 or 940EZ, is filed annually, the tax is required to be deposited, generally, in quarterly installments. No deposit is required until the amount due exceeds $100. Employers subject to FUTA may also be required to pay state unemployment taxes, most of which are creditable against federal FUTA.

Third, although employers are not required to withhold income tax for household service in a private home, the employer and the employee can enter into a voluntary withholding agreement. This is truly voluntary -- <u>both</u> parties must agree. Of course, if income tax is withheld, it must be shown on the Form W-2 and remitted to IRS.

There are two basic questions the IRS generally receives regarding domestic workers: (1) which workers provide "domestic services" and (2) are these workers employees or independent contractors. Let me address each of these questions in turn.

The special FICA, FUTA, and income tax withholding rules I have just described all apply to employees who provide "domestic service" in a private home or apartment of their employer. Treasury regulations indicate that services of a household nature provided, for example, by cooks, governesses, housekeepers, maids, babysitters, gardeners, handymen, etc. are "domestic service" subject to the above described rules.

In almost all cases, workers who perform these services will in fact be employees of the person in whose home they are performed and not independent contractors. The IRS uses the same 20 common law factors used by the Social Security Administration to determine whether a worker is an employee or an independent contractor. These factors are used to determine whether the person for whom services are performed has the <u>right</u> to direct and control the performance of the services. In the case of domestic services,

the person in whose home the services are performed is almost invariably the person who has this right.

In some instances another person, such as the operator of a commercial housecleaning business, has this critical right to direct and control. In those cases, the household worker is an employee of the commercial service. The commercial service, not the homemaker, is then responsible for employment taxes. The IRS's published guidance, applying the common law 20 factor test, has generally treated housekeepers, maids, and babysitters as employees of the homemaker, except in those cases where a commercial service has been involved.

The FICA, FUTA, and W-2 reporting/payment obligations described above apply regardless of the household employee's immigration status and/or whether the employee has a social security number. If the household employee has applied for a social security number, the employer should indicate "applied for" in the space for the employee's social security number on Form W-2. If no number has been applied for, employers should file the Form W-2, give the name and address of the employee, but leave the space for the social security number blank.

Finally, I would like to point out that the statutes of limitations with respect to employment taxes apply only if a return for the period is actually filed. Thus, if an employer does not file the required employment tax return(s) for any period for which the employer has such an obligation, there is no time limit on the IRS's authority to assert the unpaid employment taxes. A household employer's tax liability can therefore extend back over the household employee's entire working career. This liability includes the obligation to pay both the employer's and the employee's share of FICA.

Compliance

Each year the IRS receives around 1.4 million quarterly Forms 942. Since taxpayers who employ household workers on a regular basis would have to file four Forms 942 for the year, the 1.4 million receipts suggest that only about .5 million households report household wages.

Occupational data from the Bureau of Labor Statistics for 1992 indicates that there are about 1.13 million workers employed in private homes. This is in addition to workers employed through agencies and commercial services. Many of these 1.13 million employees work for two or more household employers during a given time period. For example, it is quite common for a cleaning person to work for five different households during the week. Based on this, we estimate that more than several million households should be reporting to IRS.

Factors Contributing to Noncompliance

There are a number of factors contributing to this noncompliance, one of the most significant of which is the low FICA threshold of the $50 per quarter. Under the current rules, for example, if a taxpayer pays a household employee more than $50 in a calendar quarter, the taxpayer is required to file a Form 942 and transmit FICA taxes for that quarter. In addition, at year-end, the taxpayer is required to file a Form W-2 for that employee. The $50 per quarter FICA threshold was intended as a "casual labor" exception that would exempt household employers who paid minimal household wages from the obligations previously described. The failure to increase the $50 per quarter threshold since it was enacted in 1950 has caused the exception to become virtually meaningless. As a result almost any household employment will exceed the threshold.

A second factor contributing to noncompliance is the burden imposed on household employers. A taxpayer employing a full-time nanny must annually file five separate Federal tax forms -- four Forms 942 and one Form 940. This taxpayer will also have to make between five and eight separate payments of FICA/FUTA -- four quarterly FICA payments with Forms 942 and up to four quarterly FUTA deposits.

Many would say that this is an extraordinary burden given the relatively small amounts of actual tax involved.

Another factor contributing to noncompliance is the cost to the household employer. In addition to the tax required, many household employers will pay both halves of the FICA tax out of their own pocket. Also, many employees will need additional compensation to cover their income tax liability on the reported wages. Because of these items and a potential FUTA liability, complying with the rules could increase a noncompliant household employer's costs by between 15 to 25 percent.

A fourth factor contributing to the noncompliance in this area is the unwillingness of some household workers to have their wages reported. Recently, there have been a number of media articles showing household workers refusing to accept checks, provide social security numbers, or to have taxes withheld. Some of the reasons for this unwillingness are (1) fear of exposing illegal immigration status, (2) concern over the impact of the household wages on the workers' eligibility for welfare, disability, or unemployment benefits, (3) a desire not to have their compensation subjected to income tax or reduced by the employee's share of FICA, and (4) a general reluctance to have their employment documented.

A fifth factor is household employers' lack of awareness of their obligations. Few individuals who hire babysitters or cleaning persons on an intermittent basis think of themselves as an "employer" even though the IRS tax forms and plain language publications clearly indicate they are employers and are required to pay employment taxes on wages paid to babysitters and cleaning persons. However, it's difficult to get individuals who don't think of themselves as employers to confront the rules and reach the appropriate conclusion -- i.e., in most cases they are, in fact, employers with employment tax obligations. IRS efforts to educate the public on this matter are hampered by the fact that there is no simple way to identify potential household employers.

A sixth and final factor contributing to noncompliance is the "passive nature" of not complying. It is easy for the taxpayers not to comply. They merely ignore the rules.

IRS Compliance Initiatives

As I have outlined, there are many potential causes of noncompliance, not the least of which is the burden and complexities of the rules.

The Service has adopted a major strategy to improve compliance with all tax laws, including employment taxes. Under this strategy, known as Compliance 2000, we recognize that the tax system works best when taxpayers understand what is expected of them, when the burden of meeting their tax obligations is minimized, and when they are given information and assistance that enable them to comply.

Traditionally, our activities have been geared toward correcting noncompliance primarily through the use of enforcement. Under Compliance 2000, enforcement will remain a key tool but we are using a much broader range of tools such as education, outreach, improved forms and publications that are tailored to remove barriers and obstacles to compliance facing specific groups or segments of taxpayers.

Activities currently underway include:

- Working with taxpayer groups, such as trade and employee associations, we identify the barriers, clarify the rules and otherwise facilitate compliance.
- Using technology from our Tax Systems Modernization efforts, we are using data to identify groups of taxpayers that seem likely to hire domestic employees and then provide outreach and educational materials to help those taxpayers better understand their tax obligations.

- Again using technology and experience from our Compliance 2000 activities, we are identifying segments of the population with common characteristics to better focus our outreach efforts.
- We are developing bilingual forms to help individuals who speak English as a second language comply with their tax obligations.
- The IRS Non-filer strategy, which is another part of our Compliance 2000 implementation, provides mechanisms for noncompliant taxpayers to come forward, pay their taxes and get into the system. As part of this strategy, we liberalized the procedures for making installment payments of delinquent tax, and we are taking a much more positive look at offers in compromise.

Conclusion

In conclusion, I would like to thank the Subcommittees for this opportunity to discuss employment taxes for household workers. We are cognizant of the current tax burdens imposed on household employers, and we share your desire to reduce these burdens. We are also cognizant of the noncompliance in this area and the need for changes to eliminate the causes of noncompliance. We look forward to working with you and your staff in developing appropriate solutions.

Chairman JACOBS. Mr. Matsui.

Acting Chairman MATSUI. Thank you, Mr. Chairman.

I would like to thank all three of the members of this panel.

I would like to ask Mr. Washburn, under Chairman Rostenkowski's legislation, H.R. 13, he would allow employers who hire domestic workers to pay these payroll taxes through their personal income tax returns, and that would solve the problem in terms of your collection problems.

Obviously, with regard to unemployment compensation, there is a State requirement as well. How can we bring the State program into line with the Federal program? Is there a way that IRS would be willing to collect the taxes, for example, for the States, as well as the Internal Revenue Service and then pass them back on to the States? Because we could spend forever trying to get the 50 States to comply or to work with us on this. Perhaps you can respond.

Mr. WASHBURN. I cannot give you an absolute answer on that, as you might expect, because when it comes to matters of policy, I have to defer to our colleagues at the Department of the Treasury.

I would like to mention that we are working with Social Security, the Department of Labor, Office of Management and Budget, and many of the States to simplify the W–2 and employment tax reporting, but I am not prepared to provide any details on that, Mr. Chairman.

Acting Chairman MATSUI. But do you feel there is some way—obviously, Mr. Rostenkowski's legislation is one that we probably will be looking at very seriously and hopefully to be moving on over the next few months. Is there some way we can work with you and try to come up with a way that we can also get State compliance out of this, as well? It is obviously both a Federal and State problem. How do we make this simple for people? There are five forms I think we are talking about.

Mr. WASHBURN. When you get into the unemployment area, I think that is where it becomes very complex and it is something that we would like to work on and we are working on, but I would not want to sit here and say that we can make it work.

Acting Chairman MATSUI. But you feel that, from your perspective, the Internal Revenue Service, this is something that you can work out?

Mr. WASHBURN. We would like to work it out.

Acting Chairman MATSUI. Perhaps Ms. Wyrsch——

Ms. WYRSCH. Mr. Matsui, I think it would be important to talk about the issues that arise when you talk about collecting State taxes once a year in the 1040 process, which occurs after the end of the calendar year, which is the subject of the wages paid.

The State employment security taxes are paid quarterly. They are paid on a variety of wage bases. The 53 States have their own laws which establish their tax rates and their wage bases, and so on. They are also experience rated. That means the taxes the employers pay relate to the experience that the employer has with being charged with unemployment insurance benefits.

The Federal unemployment tax, I should remind you, is a flat tax; it turns out to be $56 year per employer, because it is 0.08 percent on the first $7,000 of wages. However, the State unemploy-

ment taxes range all over the place in terms of the rates that the employers experience with experience rating and a number of other factors. So the experience rating would be one factor that would have to be entered into.

Most States determine their experience rating somewhere around September of the calendar year, then set the tax rate in November of the calendar year. If they had to wait until the first quarter of the following year, there would be some difficulty with the experience rating.

In addition to paying the taxpayers, employers also report wages to the State employment security agencies that are the basis for the eligibility for the individual beneficiary. So that typically when a person walked into an unemployment office in California, Indiana or any other State, their wages are on file in the State at that moment, having been reported quarterly by their employer.

If you did not have the tax paid by the employer except once a year, and again with the lag of the 1040, there would be the issue of what you require of the employers with regard to the wages. If they reported the wages after the fact, the wages would not be there for the eligibility of the beneficiary.

So these are just a few of the points that I think States would raise in terms of issues that they would have to deal with in moving to what is otherwise a very simple proposal and one that would probably achieve more compliance. We are not saying it would not, but there are some details of the operation of the unemployment insurance that would have to be taken into account. And our position is that we would like to have the States do that on an individual basis, to make that choice.

Acting Chairman MATSUI. I would like to thank the panel.

Mr. Chairman, I would just like to make a comment. I am going to have to leave, and Mr. Santorum may, as well, because the unemployment insurance bill is on the floor and so my leaving is not disinterest in this hearing.

Thank you.

Chairman JACOBS. Thank you, Mr. Chairman.

Mr. Bunning.

Mr. BUNNING. Thank you, Mr. Chairman.

Mr. Washburn, last year, you proposed a simplification report procedure for domestics that would have raised the threshold amount of $50 a quarter to $300 a quarter, and it was linked obviously to the reporting through the home owner's 1040. Does the IRS still support that simplification? This was in H.R. 11 that we passed last year.

Mr. WASHBURN. Congressman, the IRS does not directly propose legislation. That would come out through Treasury. It was proposed by the Department of the Treasury.

Mr. BUNNING. Are you not an employee of the Department of the Treasury?

Mr. WASHBURN. Yes, I am, sir, but I am not a policymaker. It was proposed by the Department of the Treasury.

Mr. BUNNING. Why was $300 chosen? Do you have any idea?

Mr. WASHBURN. No, sir, I do not. I am not sure where that figure came from.

Mr. BUNNING. Well, I assume that the Treasury arrived at those numbers similarly as our colleagues here who testified before you. A lot of us feel that is too little. Do you have any——

Mr. WASHBURN. From a tax administration standpoint, I guess a larger number might be desirable, but there are many other factors to consider besides the ease of administering the tax law and the impact on the worker. So I do not have a position on what a desirable number should be, other than the $50 is too low.

Mr. BUNNING. Just changing the subject a little, from your perspective, is unreported domestic employment more of a problem with aliens and/or legitimate citizens, or do you have any idea?

Mr. WASHBURN. Well, I would just have to speak from my own experience, and my personal opinion is I doubt that there is much of a distinction. I think when you get into the occasional worker in a home, probably the noncompliance is not caused by whether that worker is an alien or a citizen.

Mr. BUNNING. Lou, would you mind answering that same question?

Mr. ENOFF. I could not say. The IRS handles compliance. What we do, though, in a situation where an alien who is legally in the country, but not authorized by the INS to work, tells us that they have worked and it is not credited is to report that to the INS, so that——

Mr. BUNNING. In other words, it would be more of a disadvantage for the illegal to try to get those benefits, because of the consequences that——

Mr. ENOFF. It could be. I do not think, frankly, that the INS follows up on those individual reports. I think the only thing they do is see if there is a pattern of employment on the part of the employer.

Mr. BUNNING. Unless it is nationally televised. I say that only because the poor person that the Attorney General nominee hired has now been under scrutiny by the INS, and——

Mr. ENOFF. I do not want to get into all of that, but I think that the situation changed with the Immigration Reform and Control Act of 1986 and what happened there. There were some changes that even complicate it more, when you talk about how you determine whether a person is legally entitled to work in the 1986 act, but I think that is clear now.

Mr. BUNNING. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman.

Mr. Washburn, in reviewing your statement, it looks like the number of people complying with the requirements to file quarterly reports is perhaps lower than 25 percent that was represented earlier, is that right?

Mr. WASHBURN. Congressman, I do not have a percentage number. We just know that there are a lot more than 500,000 households out there that have domestic workers. We think it is probably several million. We have not come up with a specific estimate.

Mr. CARDIN. You receive approximately half a million reports for domestic workers?

Mr. WASHBURN. About 1.4 million returns, but since they are supposed to file quarterly, I think we figure about half a million households.

Mr. CARDIN. Do you know what the range of reports is, how much is included in those reports, how many people are filing between $50 and $300 or $500?

Mr. WASHBURN. I do not have the complete range, but we have looked at a number of those returns and there are very, very few that are filed now that are less than $600 in wages.

Mr. CARDIN. I think it might be very helpful for the committee, if you could make that information available to us, so that we cannot only see the number of people complying, but at what income level of wages the average person is complying.

Mr. WASHBURN. We would be glad to do that.

Mr. CARDIN. Do you also have any information that might be helpful to us as to whether the person who is filing the 942 also files a Federal income tax return?

Mr. WASHBURN. I do not have any information. I am not sure what our procedures are on that.

Mr. CARDIN. It may be useful if you could try to check for us to see whether there would be any IRS data as to the relationship between the people who are filing 942s and those filing income tax returns. I agree with you on the factors for noncompliance and I particularly want to emphasize the sixth factor, and that is the passive nature of noncompliance. It is very easy for a taxpayer to say, "Gee, what is a 942 form? I have to go to my accountant to pick up that form. I do not know about it, and it is not widely reviewed."

Whereas, the annual income tax return is one that all taxpayers are aware of. If a large number of people are filing their income tax returns anyway that would have to file a 942, it seems to me that there would be a much larger degree of compliance, particularly if you design a line on the annual tax return that requires the taxpayer to focus in on whether they have domestic workers. I am curious as to your view on that.

Mr. WASHBURN. Yes, I think from a tax administration standpoint, that would both improve compliance and reduce the burden on those household employers, because they would not have to go get another form some place and file more returns.

Mr. CARDIN. Again, if you can get us the data, I think that might be useful. Of course, the enforcement then would depend upon a person not only filing under the Federal income tax, but also filing the W–2.

I am curious, as to Mr. Shaw's point and Mr. Grandy's point earlier, as to the cost factor of changing these reporting requirements. Obviously as we increase the level people are liable for the tax that would have a negative impact, but if we get higher compliance, we would certainly have more taxes that would be collected.

Mr. Shaw's point on amnesty, it seems to me that is going to bring in a significant amount of revenue—an amnesty program that allows people who want to come forward the opportunity to do so, without the tremendous burdens of paying all the back penalties and interest. Again, I would welcome any information you could make available to our committee, so that we can try to put

together a package that makes sense for the American taxpayer, that is enforceable, and that is responsible in terms of cost.

Mr. WASHBURN. We would be glad to do that.

Mr. CARDIN. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Santorum.

Mr. SANTORUM. I just received word, as you looked this way, that I am being called to the floor with Mr. Matsui.

I wanted to pick up on Mr. Cardin's point, which may be a way to increase compliance, is to include a form 942 in the standard packet. If there are that many people who are going to be subject to it, why not put it in there so it is available to everyone? I see all these forms back there and I did not know whether I need to read them, so I read them and find out whether I do. I think having it in that packet causes people to say, hey, this is maybe. So maybe I would make that by way of a suggestion of what you can do unilaterally.

I hate to ask a question and then run, but you put some suggestions, Mr. Washburn, of what you are doing to increase compliance. Do you have any suggestions for these committees as to what we can do to increase compliance beyond maybe what has been discussed?

Mr. WASHBURN. I hate to sound like a broken record, but we know there is a major problem with domestic employment and compliance with the tax laws and we would like to work with you. I know that the administration considers this a serious problem, but we have not had an opportunity to work with them and know what their position is.

Mr. SANTORUM. I will open it up to the panel, if anyone else has any enlightenment for us.

Mr. ENOFF. Well, I think some of the newsletters that we talked about that we jointly produce, if the members—I mean this is not the committee action, but members could send out that kind of news in their own newsletters, if that helps to some degree.

Mr. SANTORUM. Speaking more from a legislative perspective——

Mr. ENOFF. On legislative action, at this point, other than working with you, I can't offer anything off the top of my head.

Ms. WYRSCH. We also have some administrative efforts under way in revenue quality control and employer compliance pilots, but we have no legislative suggestions for you at this point.

Mr. SANTORUM. I wish I had more time, Mr. Chairman, but I have to go. Thank you.

Chairman JACOBS. Thank you.

Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

I said earlier that we have got a national problem and we have got to do something about it, and we are all in agreement on that. This is a societal problem we have and we have all winked at this problem, every one of us, us included and the public. It has been sort of a national sin that we just politely accept, and now it has been thrust upon us and we are about to act upon it.

I want to pose one specific question to Mr. Washburn. In the area of compliance, if we are to increase compliance by the employers, by making it easier to report the taxes and raising the threshold, then it seems to me that the IRS is likely to become aware of

domestic employees who are not reporting their income to the IRS. So as we force compliance, we bring that fact out.

Now, the employers are not required to withhold income taxes, so the domestic employee then may find himself being held liable for back taxes or interest or penalties. That is a very likely possibility, if you increase it. Have you got any recommendation as to how we handle that? Does amnesty cover that?

Mr. WASHBURN. Again, I cannot speak to amnesty, but I think we have to be aware that that could become a problem, as domestic workers have the liability to pay taxes at year-end.

Mr. PICKLE. Well, I think we ought to be honest ourselves. It has not been mentioned here today at all, but it is a fact, there is a sort of agreement between employer and employee, the household manager and the employee that they don't pay Social Security taxes. Many of the employees will not accept payment, they do not want it. It is a situation that has built up over the years and, right or wrong, that is a factor and we have accepted that because we have played the game according to society's rule.

Now as we try to find an appropriate approach, then I think we have to ask the realistic question of how can we do it. Mr. Chairman, I would like to ask Mr. Washburn two or three questions, and they would also be appropriate for you, Mr. Enoff, and also would apply to the Department or Labor, although it is more for enforcement.

Mr. Washburn, my first question would be how do you feel about the idea of an annual versus quarterly tax threshold for domestic workers?

Mr. WASHBURN. Again, I think that would reduce the burden on the employers, as the people complain that it is too complex or too burdensome doing an annual report, obviously, it is less burdensome.

Mr. PICKLE. Then you would recommend an annual report.

Mr. WASHBURN. There are many benefits.

Mr. PICKLE. Mr. Enoff.

Mr. ENOFF. Well, Social Security wages are reported annually now, anyway, so it fits better administratively from a logical point.

Mr. PICKLE. Do you have any feeling on that?

Ms. WYRSCH. Well, I have two things to say. With regard to the Federal Unemployment Tax Act, most employers wouldn't pay it except once a year, anyway, because it is a requirement that you have to have $100 a quarter before you pay it quarterly.

Mr. PICKLE. All right.

Ms. WYRSCH. With regard to State tax, again, I make the point that we consider it should be optional for them to participate in it.

Mr. PICKLE. Now, this is our problem and we on this committee have got to crack this thing, so let me ask you a technical question. How do you feel about enabling domestic employers to file the taxes they owe from their employees on their own tax returns?

Mr. WASHBURN. From a compliance standpoint, I think that would likely improve compliance and also make it easier for them to pay.

Mr. PICKLE. Would you recommend that approach?

Mr. WASHBURN. Again, I think there are a lot of advantages to it. I am not sure that I have thought it through, but there may be some disadvantages, too.

Mr. PICKLE. I don't know, Mr. Enoff, if you have any feelings about this. Do you?

Mr. ENOFF. No. IRS is the collection agency.

Mr. PICKLE. One last question: How do you feel about enabling domestic employers to pay the Social Security and Federal unemployment taxes they owe through increasing withholding of their own wages?

Mr. WASHBURN. You are talking about a vehicle for the domestic employer to pay the tax throughout the course of the year. I think that would have many benefits, too. I am not sure, again, if there would be implications in the unemployment tax area or not.

Mr. PICKLE. Well, we have tried to make an improvement on that. We passed a law last year out of this committee and it was vetoed, which would have helped. I think we have now got to determine how we approach this thing from an annual basis or a quarterly basis, and what kind of forms are going to be required and who is going to make the reports. I would appreciate it, as a member of the committee, if you would give us your recommendations. I know you do not want to get out in that field, but we are going to ask you, so we would like to have your opinion.

Thank you, Mr. Chairman.

Chairman JACOBS. Thank you, Mr. Pickle.

Mr. Houghton.

Mr. HOUGHTON. Thanks, Mr. Chairman.

I guess the basic question that I keep asking myself is what really is practical here. In certain cases, there is a question of whether people who are working domestically really want to fill in these forms, really want to be involved in the system.

I understand that some domestics rely on the spouse benefit, they don't want to be involved themselves. So the question really is how do you create a system where both sides, the employer and the employee want to be caught up?

The other thing is a table, and it seems to me that the $300 a quarter figure is a pretty good figure, for a variety of reasons, not the least of which is that is where the reporting kicks in. It does not really kick in before that. This table is from employers quarterly tax return for household employees, form 942. So to go much below that, you are not going to get compliance as far as the employer is concerned. To go much higher than that, clearly you are going to cut out some people who would like to be involved.

So I think I have the two questions: One, is that $300 figure, because of the compliance factor, an important one? And second, how can we urge or create a system where those people who are working do not want to rely on their spouse, but really be involved themselves?

Mr. WASHBURN. On the threshold that we are talking about, the $300, Mr. Houghton, I really have to defer to the Treasury Department on that number. As I say, there are many reasons that it could be higher, many reasons that the $300 is a good figure.

I am sorry, I am not sure I understood the second question. Was it the——

Mr. HOUGHTON. Well, some people will plead that they not be involved in any Social Security calculation, because they are working for a variety of different people, they want this still on the black market, they don't want to have this. What is the incentive for them to be involved?

Mr. WASHBURN. One of the things we often forget about the domestic workers themselves, that we often think they want to be outside the system because they don't want to pay taxes, but many times when they do that, they are losing the earned income credit. There are some benefits that they would be entitled to by getting into the system.

The whole issue of domestic workers or any other workers being outside the system, obviously that is a major problem for the IRS, the cash business, the underground economy.

Mr. HOUGHTON. Do you think it might be helpful, if it appears an adjustment will be made, that there be some sort of education so the people who are going to be affected really simply understand the basic arithmetic of what is going to——

Mr. WASHBURN. You are absolutely right, that is one of the major thrusts of our Compliance 2000 program. What we are trying to do is, rather than just do a general education for the public, we are trying to focus on specific—we refer to it as market segments, for specific groups of taxpayers who have different needs from the IRS in terms of education and assistance and outreach, and domestic workers and immigrants. Those are obviously groups that need help in this area.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Chairman JACOBS. Mr. Kopetski.

Mr. KOPETSKI. Thank you, Mr. Chairman.

I want to thank the panelists for their testimony and helping us understand this. I got a copy of 942 and I read on the back side, which I think is kind of interesting. You folks are required under the Paperwork Reduction Act to outline how much time these forms take. It says recordkeeping, 20 minutes—this is form 942—learning about the law or the form, 20 minutes, which I am not sure I have a complete understanding of the law, and we have been going on here for over an hour. Preparing the form is only 32 minutes on a good day. Copying, assembling and sending the form to the IRS, 20 minutes. I think you have a lot of optimists working in this part of the Revenue Service here.

I also got the complete packet out that each employer household, the couple million people would have to read through and kind of fill out and understand. Maybe they have more than one domestic worker, maybe something happens and they change people in midcourse. We are not just talking about that service, we are talking about each individual, and perhaps also they have a youngster come in to mow their lawn once a week through the summer months, and in Oregon into September, as well, and maybe it is two youngsters we are talking about, because one went on vacation or got a paper route or something like that.

I mean we are not just talking about once in a lot of instances. I guess I am really worried about this whole—well, the first question I guess, Mr. Washburn, your numbers that you used in terms

of domestic workers, is that for household cleaning services only, or are you including gardeners and outside activity?

Mr. WASHBURN. I think that included all types of domestic workers.

Mr. KOPETSKI. Then the other area, you mentioned on the amnesty issue that if you haven't filed a form and reported this, then there is no statute of limitations, you guys can go back forever, but the policy is 6 years, is that correct?

Mr. WASHBURN. The statute is open, but our general policy is 6 prior years, right.

Mr. KOPETSKI. So I think we just scared the heck out of everybody in America, because if they want to do right and start obeying the law, because we give them the benefit of the doubt, they just learned about this, they say, well, what is going to happen to me once I start filing, am I now responsible for at least 6 years back. Somehow, it seems to me that if we do not address the amnesty issue and allow people to start fresh, we are in serious trouble. A lot of people will not comply, because now they are worried about an audit, and so I have some questions in this area. If we offer amnesty in order to fix the problem, do you think we have to have a blanket amnesty all the way back in this area?

Mr. WASHBURN. I am going to have to bring up that broken record again. I really cannot comment on the amnesty issue.

Mr. KOPETSKI. Who is the right person to ask from the committee?

Mr. WASHBURN. The Treasury Department.

Mr. KOPETSKI. I mean most people worry more about the IRS than the Treasury Department in this country, I have found out, at least my constituents do. Would this trigger an audit with the IRS, if somebody all of a sudden started paying this?

Mr. WASHBURN. No. In fact, we have a nonfiler program in existence right now that is focused on all types of tax, and what we are looking for is people to get into the system and we are willing to work with them. We recognize that some people cannot pay 6 years worth of tax, whether it is income tax or possibly even FICA tax, and that is why we have a process for installment agreements. We have a process for offers and compromise, and it is basically to compromise the liability, depending on the facts, their ability to pay, all of those types of factors.

One of the things that we are very, very concerned about, you know, when we talk about opening up and allowing people back into the system and making it easy, that is true, that may get them into the system. But what about the rest of the American taxpayers out there who have been in the system all along and who have been sacrificing and doing what they were supposed to do?

Mr. KOPETSKI. That is a very good point. Let me understand then, if somebody wants to start today what you are suggesting to them, is they are going to have to go back 6 years worth to really become a good guy?

Mr. WASHBURN. Yes, generally, that is a general rule. But if somebody comes in and is in a position where it is absolutely impossible for them to pay that liability, again, depending on the facts, we may be willing to compromise that liability, or if they do

not have it up front but could pay it over time, we are willing to enter into an installment agreement.

Mr. KOPETSKI. Well, let me ask this: Is it possible that it would trigger an audit of a worker who all of a sudden you might find this information on and use it to go audit people to see if they have been paying an adequate amount or any income tax at all? The employer files and all of a sudden, hey, I heard Jim Jones, you know, do you check his files?

Mr. WASHBURN. That information would go into our system, but the types of incomes and things that we are talking about here, it is very unlikely that we would ever do an audit.

Mr. KOPETSKI. Very unlikely, but I remember a couple years ago when you guys started auditing child care providers in this country. We like to think of you guys just going after the big guys, but all of my child care providers all of a sudden were getting audited.

The other issue, just generally, what kinds of problems does it create, if we give full-blown amnesty to everybody involved in this, if they just start fresh? Are there some problems that I am not aware of, other than the equity issue of other Americans who have been paying all along?

Mr. WASHBURN. I think there are a number of problems and, again, I would have to defer to Treasury on that.

Mr. KOPETSKI. But there would be no problem with IRS?

Mr. WASHBURN. No, there would be problems.

Mr. KOPETSKI. Well, you do not have to defer to Treasury to answer the question for IRS, do you?

Mr. WASHBURN. I think we are not talking about so much the mechanics of dealing with an amnesty and forms and all of that sort of stuff. We are talking about the major thrust, the major issue, of course, is the policy of amnesty and the impact of amnesty, the revenue. All of those things are not IRS positions, they are Treasury positions.

Mr. KOPETSKI. Thank you.

Mr. WASHBURN. I would like to be able to answer your question, but I just cannot.

Mr. KOPETSKI. Thank you. I will ask Mr. Bentsen, I guess.

Chairman JACOBS. Mr. Shaw.

Mr. SHAW. I would like to follow up a little bit on the gentleman's line of questioning with regard to compliance. I have heard of situations where somebody becomes of Social Security age, goes in and asks why they are not getting their benefits and then find out that there is no employment record. Then they start asking questions about their employment record, and I think that is what gets your troops moving, Mr. Washburn, to go out and collect. Is that generally the primary way in which you do catch these people?

Mr. WASHBURN. We get referrals from Social Security Administration regarding that type of situation.

Mr. SHAW. You give it to the IRS and IRS goes out and collects it and then that person does become eligible for the benefits after the taxes have been paid in?

Mr. ENOFF. Just to make a point. If the person comes up with proof that they did in fact work, then we credit their account and we inform the IRS. Whether or not taxes are collected is an IRS

enforcement issue. But we do credit, if they have proof that they have in fact been employed.

Mr. SHAW. Mr. Washburn, would you be able to—you can listen to the question, too, because you might have some opinion on this, if you would—be able to comment or to come up with an estimate as to what an amnesty program might bring in? Obviously, people would be more willing to come in, if they were facing the penalty and the interest and they saw they had a window of opportunity in which to come clean and, in fact, retroactively say that they have been playing by the rules. Of course, it means that the employees would automatically benefit, these people would not be falling through the cracks.

Do you have any idea or would you be able to give us an idea as to what type of revenue this would bring into the Social Security system and the effect that this would have? Because bringing it in, of course, would also mean that the employees would be given credit, which would mean that in the future they would also receive benefits.

Mr. WASHBURN. I really do not have any idea. I don't have any information on what that might bring in.

Mr. SHAW. Would you, in cooperation with the Social Security system, be able to give us some idea of what effect this would have on the system, should we pass an amnesty provision in the law—again, I am making this very clear—only forgiving penalties and interest, not in any way forgiving the taxes due?

Mr. ENOFF. The difficulty, Mr. Shaw, is you are asking us to predict behavioral aspects. We can probably come up with some numbers.

Mr. SHAW. We haven't had any experience with amnesty that I can think of. I know some States have. I know Massachusetts did this and brought in a ton of money. I think it was income tax or something that they had. Maybe we could look at their model to see how people do react to such an opportunity.

Mr. WASHBURN. If we could work with the Department of the Treasury and your committee, maybe we could come up with something.

Mr. SHAW. If you would try to supply us with something, I think that would be helpful. I think there is enough interest on this committee to go forward and, quite frankly, I think it would do a lot of good for a lot of people. It would not only have an effect on the amount that we would collect that is due the Government and due these employees, but also it would bring the people in line so then they would be in a compliance mode from now on.

I want to switch gears here for just one second and go back to an area that you mentioned in your testimony, Mr. Enoff, and Congressman Jake Pickle also touched on and expanded on a bit, and that is what happens when these reports are turned in.

You talked about employees, some of them not wanting to have these filed, because they were receiving certain governmental benefits, such as housing, subsidized housing, food stamps, aid to families with dependent children. I mean the list just goes on and on, when you start thinking of the people that might actually get caught in a very wide net that we would throw out called compliance. Can you elaborate on your testimony in that area?

Mr. ENOFF. I think it may have been Mr. Washburn who said that, but I will be glad to elaborate. One thing we did not talk about, I suppose, is people who are concerned about violating the earnings test, who are retirees.

We have been talking about younger people, but we know that there is some kind of an underground economy in which people do not want to report earnings, because they don't want to run into the earnings test under Social Security. Those estimates have always been most difficult to come by, because, again, you are trying to predict behavioral responses and things that are not well counted. So our experience at trying to deduce any potential benefit from changes in the earnings test because of income have proven inconclusive. That is all I could say.

Mr. SHAW. Do you have any comment, Mr. Washburn?

Mr. WASHBURN. No, other than I guess our estimates of the causes of noncompliance or reason for noncompliance are based on our experience in administering the law, are based on information, research that has been done by academia and a number of sources, but I don't have any more specifics that I think would be helpful.

Mr. SHAW. I think in our economy it is fairly simple for somebody to get a job at the pay level of a domestic where there is no write-off, there is no tax benefit for the employer to report the income. I think that it is very simple for the person to find a job and talk his employer into not paying, whether it is in some instances out of ignorance or some instances just figuring that is fine with me, I do not care.

But I think that this committee, and particularly the Subcommittee on Human Resources, which is half of the committee that is sitting here today, that this is something that we have to consider. Compliance might very well have a two-prong beneficial effect. One is get the benefits out there for people who deserve them and need them, and also it could be a way of catching welfare fraud. I think that both objectives are objectives we want to accomplish by encouraging compliance and do it in a practical way that will make it a minimum burden on the American employers.

Chairman JACOBS. Mr. Grandy.

Mr. GRANDY. Thank you, Mr. Chairman.

I might say just say parenthetically to my friend from Florida, I think the problem with welfare fraud is the welfare system and the low asset thresholds that we oblige people to live under. Under the payment system if one works over a certain amount of earned income, one is penalized, so naturally a recipient would ask an employer to pay off the book and in many cases the employer will oblige, because it is very often the humane, civil thing to do.

But I think the reform is probably in our legislation on welfare reform, not so much in this particular matter, where we are trying to get people to work more publicly and pridefully.

The question I want to explore with you two men is this whole nature of the common law control test which you both I guess, as representatives of the IRS and the Social Security Administration, administer. Now, this goes back to something that Jake Pickle and Amo Houghton were talking about, and that is that consensual agreement or contractual agreement between the employer and the employee.

I was reading through this test, Mr. Washburn, and then referred to your testimony about the factors that are used to determine whether a person for whom services are performed has a right to direct and control the performance of services. You say that in almost every case, the employee is just that, not an independent contractor.

But I see nothing in this common law control test that would allow the two participants, that is, the employer and the potential employee, to agree on some kind of arrangement whereby if there was a person who did not want to be paid Social Security, for a legitimate reason, not for welfare fraud, they could do so. And simultaneously, is there a worker right provision that is implicit in this test that would say to somebody, if you want your Social Security paid, you must have it paid, regardless of the threshold?

As I look this over, and I have conferred with various accountants on this, it seems to me that it does not as clearly stipulate what the relationship is between the employer and the employee and how much flexibility they have. It seems there might be some room for reform there. You are shaking your head, Mr. Enoff.

Mr. ENOFF. I do not think there is any room for reform. I mean right now, if you pay $50, you are liable.

Mr. GRANDY. Right.

Mr. ENOFF. So the employee cannot say "don't pay it" legally.

Mr. GRANDY. I know that.

Mr. ENOFF. Then I am missing the point.

Mr. GRANDY. What I am saying is we are probably going to raise the threshold, and I don't know what it will be, but it will probably be around $300 or maybe a little bit more. My point is, is there within this common law control test, implicitly or explicitly, ability for employers and employees to either agree that the potential employee wants to be an independent contractor and can provide those services independent of the requirement of the Social Security test, or, conversely if that employee wants Social Security paid, regardless, can they have it? If not, why not?

Mr. ENOFF. If the so-called employee wants to be an independent contractor, he can become independent, hold himself out as an independent.

Mr. GRANDY. In other words, if somebody comes to work in a household——

Mr. ENOFF. He is liable, he or she is liable.

Mr. GRANDY. Yes, I understand that, but if they are willing to accept—is that allowed? If I were basically in some kind of a court case where I said this person said they wanted to be an independent contractor and did not pay Social Security, where does the court come down on that? Who has the burden of proof there?

Mr. WASHBURN. It is just not a matter of the form of the agreement. The 20 common law factors go back to the substance of the relationship. If indeed the relationship is one that one person has control over another, a mere form, a mere agreement saying that is not so really does not change anything.

Now, it is true that there may be an occasion where somebody is in business for themselves, they advertise, they have their own equipment, they go to many clients and so forth. Again, it would not be the agreement that would cause that, it would be the facts

in that particular case where the person was indeed an independent contractor.

What I am saying is you cannot negotiate away or do away with the employer-employee relationship.

Mr. GRANDY. Well, under the 20-factor test, I am not clear whether you have to meet all 20 factors, whether they all apply, are they a series of hurdles that you have to leap individually, or is this a collection of things you should look for in——

Mr. WASHBURN. It is a collection.

Mr. GRANDY. So it is a more general assessment of what a——

Mr. WASHBURN. Based on the common law, right.

Mr. GRANDY. Number 8, for example, if the worker must devote full time to the business of the employer, the employer has control over the amount of time the worker spends working. That is a good sentence. An independent contractor, by contrast, may choose for whom and when to work. So that if you have a domestic who can pretty much choose the day he or she comes in to do the household cleaning and so forth and the hours of the day that they can work, is that then a legitimate independent contractor status?

Mr. WASHBURN. That is just one of the factors. The factor that you read implies that where the employee comes in and spends full time and the hours are set by the employer, that would be an indication of an employer-employee relationship. But the absence of that does not necessarily mean that you do not have the employer-employee relationship. The fact that a worker may choose to agree with the employer to work on a different day or something does not necessarily mean in itself he is not an employee.

Mr. GRANDY. But who determines what an independent contractor is, the IRS or Social Security?

Mr. WASHBURN. We administer that law.

Mr. GRANDY. So if a person came to you and said I am an independent contractor, I did not want my employer to pay this, you could conceivably overrule that decision and say you are an employee?

Mr. WASHBURN. Conceivably, right.

Mr. GRANDY. Have you ever done that?

Mr. WASHBURN. Yes.

Mr. GRANDY. Very often? I mean is that a common way around the law, supposedly?

Mr. WASHBURN. I really don't know. I do not think that would be a common situation. But where we get into it is where somebody says to an employee, you treat yourself as an independent contractor, you pay self-employment tax and all of that. In that situation, of course, there is no loss to the Treasury. The Social Security tax is paid, but that is still not the way the law reads or is interpreted, with the 20 common law factors. The 20 common law factors are the only thing we have to use, that we have right now.

Mr. GRANDY. Well, that is my whole question on reform. It seems to me that if we go to a higher threshold, you may have some different kinds of contractual relationships that will evolve, particularly as may regard senior citizens who want to work part time, but not necessarily be subject to Social Security taxes and unemployment taxes, if they made that much.

My concern is there does not seem to be anything that I have heard today in the testimony or that I have seen in the law that allows some of these I think legitimate relationships to go forward. And conversely, as I said earlier, the right of that worker who may not understand the law, but probably deserves the right to insist on Social Security payments, regardless of what the threshold might be, I do not know how many workers would be out there, but I think there would be more at the higher threshold. Am I wrong in this, Mr. Enoff?

Mr. ENOFF. I do not know if you are wrong. Under the threshold, all I am saying is if you set a higher threshold, it is probably worth saying we should look at the 20-factor common law test again and see if they should be changed or could be simplified.

Mr. GRANDY. I appreciate you saying that, because if we do get into some kind of markup on this, whenever we do, that is exactly what I am going to look at, because I do not want this to stand in the way. I must say that I am a little more confused about the testimony or the common law test—and I appreciate you gentlemen explaining it—than I was before I read it.

Thank you, Mr. Chairman.

Chairman JACOBS. Put the case where a domestic employer chooses to pay for the domestic employee, both the employer and the employee's share of the FICA tax. I believe that introduces a complication about what the employee's income is, is that correct?

Mr. WASHBURN. In many cases outside the domestic area, but not in the domestic area. That is not added in, because if you have a domestic, say, that lives and is provided room and board for the convenience of the employer, then that, by statute, is not income.

Chairman JACOBS. I appreciate that, but I am talking about specifically paying the employee's share of the tax.

Mr. ENOFF. You should show that portion on the W–2 as wages.

Chairman JACOBS. That is the complication I am talking about.

Mr. ENOFF. Yes, it could become a complication.

Chairman JACOBS. Now, for our purposes, if we legislate in this area, would there be something to be said for altering that rule with respect, say, to baby-sitters? A 14-year-old kid, you withhold the tax from her—out our way, they could probably get about $2 an hour, I think—you withhold the 7.5 percent or whatever it is, 7.65 percent, you withhold that from the $2, and so she does not get $2, she gets $2 minus 15 cents, $1.85. I mean that is a classic way to do it, to withhold the employee's share. Do you think there is anything to be said for allowing the employer, the householder to avoid all that, pay the 15.3 percent and not have the complication of having that transaction embellish the income of the kid?

Mr. ENOFF. It sounds reasonable.

Chairman JACOBS. Does it?

Mr. ENOFF. I would have to look at——

Chairman JACOBS. I have heard it is true under certain law to a certain point. Are you being told the same thing I am being told?

Mr. ENOFF. Yes.

Chairman JACOBS. It reminds me of the definition of a college lecture. The notes of the instructor are passed in the notebook of the student without passing through anybody's mind. [Laughter.]

Mr. ENOFF. I think we should replay that question and answer, but it sounds like it is not a problem.

Mr. WASHBURN. It is my understanding that it is added to the income tax under current law, but not the FICA for FICA purposes, and obviously we can——

Chairman JACOBS. Well, I think that we might be interested in eliminating any consequences of that generosity.

Well, we thank the panel, and I might say to Mr. Enoff that we accord you the same epicurean courtesy we did your predecessor, so that we are gender neutral here. Thank you.

Mr. ENOFF. I appreciate the generous repast.

Chairman JACOBS. Our next panel consists of two people, Leah Wortham, associate dean and associate professor of law, Columbus School of Law, Catholic University here in Washington, and Louis Winnick, economist and senior consultant, Fund for the City of New York.

Ms. Wortham.

STATEMENT OF LEAH WORTHAM, ASSOCIATE DEAN AND ASSOCIATE PROFESSOR OF LAW, COLUMBUS SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C.

Ms. WORTHAM. Mr. Chairman and members, my role on this panel is as a legal ethics teacher, but I view the issues at hand from a few other perspectives as well.

I am a working parent. I view the issues as a household employer who actually has filed Social Security W–2s and worker's compensation in two States, a former poverty lawyer who had many domestic workers as clients and many clients who depended on Social Security and other public benefit programs for their livelihood and their health care, a former House of Representatives employee with some sense of what is possible and what may not be possible, and as a woman.

My written statement opens with the ethics teacher's perspective. I think great harm is done when Government passes or retains laws that it does not intend to enforce. As Sissela Bok says in her well-known book, "Lying," Government errs gravely when it uses its substantial force to affect personal choice to needlessly encourage deception. Government should encourage people to be honest and to comply with laws, not encourage them to violate the law.

Deception takes a toll on respect for the law, the state of mind of those who violate it, and, of course, those who were supposed to be protected go unprotected.

All of these are ethical concerns about which I feel strongly, but I think that the rage I felt daily during the Wood and Baird incidents did not come from being an ethics teacher. It came from being a woman with the feeling that this problem had been largely ignored, because it primarily affected women. Now two women were being pilloried, at least in the talk shows, because there was selective enforcement of these laws, at least in the public sense, with respect to them.

I am eternal optimist, and I believe that good things can come from bad experiences. It is wonderful that your committee is now going to look seriously at this problem. You can cause some good

for our Nation and some good for domestic workers to come out of the media frenzy that certainly stirred up a lot of bad feelings.

It is very important to resist oversimplification of the issue. In some of the comments from the various members, such as those of Congressman Pickle, I think there started to be some of the texture as to why it is not a simple issue. It is very easy to paint this, as many of the press accounts have, as a matter of greedy or ignorant employers and shortsighted or ignorant employees. There are many more things at stake here. Any serious look at this problem should consider the economic incentives for not complying which have been discussed today, and to consider individually how you wish to deal with those in any kind of system.

I want to concentrate my remarks on three suggestions that have either not been talked about or just touched on. First, on issues of coverage including the threshold, I think it is very important to concentrate on who you think should be covered.

Based on my experience with the domestic work sector, I think you should cover anyone who is regularly employed one day a week. I think you should cover anyone who is regularly employed every other week. Those are common ways that domestic workers work, in addition to people who work more hours. So that certainly affects how you view the threshold. It seems to me you can take a piece of paper and figure out how much someone who is working under those conditions would probably make from an employer.

Regularity is an appropriation indicia that could be combined with the threshold. As I understand it, IRCA makes an exception for sporadic workers, when they are talking about employer sanctions under the immigration laws.

As I discuss in the written testimony, many people are troubled with coverage of the "as needed" baby-sitter, the person you call up when you need something. I think all of us intuitively feel that person is different from someone with whom you have a regular employment relationship. Someone who comes in once a week, or every other week, is the person who we feel most concerned about not being protected later in life.

I also think a very good suggestion was made today—the notion that even if you set a threshold, it could be the employee's option to ask that Social Security taxes be paid even below that.

Point two is, certainly from my experience in not only the Congress but other parts of the Federal Government, I know that the laws involved and the provisions involved are administered by different agencies. In fact, many are State requirements. And I know the difficulties in trying to get different agencies, and even different congressional committees, to work together to solve a problem of whom many people have a piece.

Although it is impossible to get every part of this problem under one regulatory umbrella, Congress could assign one regulatory agency the obligation to at least write an information booklet that could be obtained by household employers and tell them all their requirements under the Social Security laws, the income tax laws, the earned income tax credit, the worker's compensation laws, the wage and hour laws, the treatment of room and board for tax purposes, and all the various legal issues that, if you were a business employer, your personnel department would tell you about.

The current system treats households like they were businesses, and households are not businesses. Many of the people who hire domestic workers will never hire another employee in their lives or, if they do, it is in a place of employment where the personnel department takes care of these things.

It seems to me that it is certainly good if the Federal Government tries as much as they can to get uniformity from the States, but there are certain things that, of course, will remain State requirements. Worker's compensation, as I understand, is required by half of the States for domestic employees while half do not require it. States have different thresholds. The Federal Government could at least print a booklet that mentions worker's compensation, explain why it makes a difference if you comply, and gives the names and addresses of 50 State agencies that you could contact to get information. That, it seems to me, would go a long way toward encouraging compliance.

I worry that although we may achieve compliance in Social Security that the next Attorney General candidate will be pilloried because she did not pay worker's compensation. If we are going to really do compliance, let's do compliance and let's look at all the laws on the book and decide if we think they should apply to households or not.

It seems to me if in writing this booklet, if we were writing something that seemed patently ridiculous, we would say let's look at this. Maybe this shouldn't be a law that applies to households.

The booklet should have a page that could be detached or photocopied for employees to explain the employee benefits package. One of the things that has been talked about today that I think is absolutely right is that the employee needs to understand what they get from Social Security. Certainly, many think it is just a tax they pay. They do not understand that it is a benefits package. We need to be able to have materials that allow a household worker to see that benefits package and say, "OK, I understand, it relates to Medicare, it relates to Social Security disability."

At the same time, we cannot be naive. We have to also explain to them with some simple examples, as was discussed with the IRS, when you have to start paying income taxes. For some of these people it is not enough to just say withholding is not required. For some people in this wage strata, if they are going to then be subject to income tax, they need withholding. It will be very hard for them to budget. They need to make an informed judgment about whether withholding makes sense or not.

Again, many of these people will not qualify for the earned income tax credit. That is useful information. They should know that. But it is not fair to expect the household employer to become an expert in the earned income tax credit in order to explain to an employee. I think these are all things that would go a long way to making the system work.

My third and final point goes to amnesty proposals. Here I go back to being an ethics teacher again. Sissela Bok was quoted in the New York Times as calling for a national expiation on this matter. It is very important, I think. I thought 25 percent compliance was an absurdly high figure. I do not believe that for a second that

Social Security compliance is that high. I think there are many people out there now feeling nervous, guilty, any range of things.

It seems to me that we certainly do need some kind of amnesty program, and then we have to deal with amnesty with payment, or amnesty without payment. It seems to me there should be amnesty with payment. You have people who have not been working under a record and those people need to get money paid in for their records. It seems to me it is also a good thing for Government to get the revenue.

But as was pointed out earlier, I think we really have to think about that amnesty. I think that you raise another very serious ethical issue, if the amnesty will force an employer to become an informant on an employee who has not been paying income tax, who has been in one of the public benefits programs for which they will now be documented to have committed fraud, or if they are now identified as an undocumented worker in the United States.

We can go on and say, well, but we don't think we will really enforce that, and then you start the whole problem again. We have said we have a law, but we are going to wink at it.

It seems to me you have two ways of dealing with that problem. You can either have Jane Doe filing, so the employer can file, but the filing is not linked to the record of any particular employee. You can also create an amnesty for some of the past issues with respect to employees.

There are a lot of complicated questions in doing both of those, but it would be very hypocritical and a mistake to assume that everyone who has been in the system has only been doing it because they did not want to have tax paid and that everything will be fine once taxes start to be paid. There are tentacles into all the other different aspects that were discussed today.

[The prepared statement follows:]

BEFORE THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

Statement of Leah Wortham*

March 4, 1993

In her well-known book, Lying, Sissela Bok argues that public and private institutions should "focus their enormous power to affect personal choice" in discouraging deception. In considering roles government could play in this effort, she says laws and rules should be examined to see if they "encourage deception needlessly."

Non-compliance with tax reporting laws is a form of deception. This hearing is an important step in focusing attention on justice for household workers in a system that should give incentives for compliance rather than disregarding noncompliance.

I am a law school teacher. For ten years, my major course has been Professional Responsibility, including what is commonly called Legal Ethics. Government errs when it passes laws it does not intend to be followed and allows outdated laws to fall into nonenforcement while remaining on the books. Laws that do not comport with common sense or with the practices of many people who think of themselves as honest should be examined. As I said on a recent radio talk show on this topic (today's apparent media outlet of choice), law and morality are not always the same thing.

When the government explicitly or implicitly acknowledges it does not intend to enforce a body of law, a number of bad consequences are likely to follow. "Deception" is corrosive. Maintenance of laws that the government does not intend to enforce encourages disrespect for the law. People do not always distinguish "everybody does it" on minor matters from "everybody does it" on matters of more serious concern. People who follow the rules seem like chumps. Those the law is intended to protect lose the protection.

Generally ignored laws "on the books" allow for selective enforcement or trial by talk show. Such selectivity opens the government (and the society) to cries of unfair discrimination. "Nannygate" roused criticisms that the irrationality in the system had been ignored because both employers and employees predominately are women. Critics hastened to add that the real employers were often couples, but the wrath fell disproportionately on the female half.

Besides being corrosive, deception is wearing. Dennis Thompson, director of ethics programs at Harvard University, was quoted in the New York Times recently as saying that even small transgressions take a psychological toll. "Petty violations can trip you up or distract you from the more important business of living life."

Probably because we would all like to believe law and morality are the same thing, many press accounts and water cooler conversations tried to reconcile the two with regard to tax reporting for domestic workers by citing immorality in the practices and motives of many non-complying employers. We can hear from workers who have been denied Social Security retirement, disability, or Medicare coverage because taxes were not withheld.

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We can find many examples of household workers who have been exploited with substandard wages, unfair hours, terrible housing, outrageous work demands, and other forms of exploitation. We rightly should be concerned about whether pervasive disregard for the law disadvantages workers who wish to be protected by it. These situations are all the more immoral when the cited employer's income shows there would have been no hardship in paying a competitive wage plus taxes.

This hearing, however, acknowledges the error in broadly dismissing all employer non-compliance as greedy exploitation just as it would be wrong to disregard all employee noncompliance as short-sighted tax evasion or ignorance. The following outlines several principles that I believe should be considered in designing a system with incentives for compliance rather than deception.

Keep it simple. Your subcommittees correctly identify that the system should be streamlined. Annual filing for multiple programs on a single tax form seems eminently sensible. This hearing's inventory of the legal requirements is a helpful start in itself. (I note that your press release did not include worker's compensation coverage, which I understand to be required in about half the states.) Analyze the requirements that vary by state, and see if federal incentives might encourage any of them to become uniform.

Explain it simply. Realize that we want compliance from household employers who may never hire any other employees in their lives. Provide materials that can be followed without requiring them to become personnel specialists. If all legal requirements cannot be reduced to the filing of one federal form, the federal government should take responsibility for outlining the requirements in a booklet that includes the addresses and phone numbers for pertinent state agencies.

Provide materials that employers can give to domestic employees to explain the advantages of coming "above ground," e.g. the benefits of Social Security and Medicare coverage and qualification for the earned income tax credit. Give employers an easy way to "explain a benefits package" rather than just "collecting a tax."

Do not lose site of the policies you seek to promote and the people you seek to reach. Your committee is considering various proposals to increase the dollar trigger for Social Security taxation. Test the possibilities with various hypothetical workers. Perhaps "regularity" should be a part of the test. The cleaning person who works one day per week or even every other week should earn credit for Social Security and Medicare. Most of us flinch at coverage of the "call when needed" sitter although a high school student, at least in D.C., often receives more than $25 per evening. Should the coverage of the kid across the street who mows the lawn really turn on whether he uses your lawn mower or his parents'? I understand the immigration laws exempt employers for sporadic employment.

Face honestly the economic disincentives to coming above ground. I once interviewed a number of potential cleaning people responding to my advertisement that said "Social Security taxes paid." Although all who answered professed a willingness to have the taxes paid, several openly considered my desire to do so as a strange eccentricity.

Some may have feared a drop in wages, even though I explained that I would pay both the employer and employee contribution on top of the stated wage. Several said to me, however, "I don't need the Social Security since I get it through my husband." I am not a Social Security expert. I understand their statements to be oversimplified because there are some instances, e.g. disability benefits, where having one's own separate record is important. At the same time, I understand the women so answering were displaying a degree of fairly sophisticated economic rationality.

I also am not an income tax expert, but I understand the phasing out of the earned income tax credit in the high-teens means a very high effective tax on the last $2000 to $3000 of income. Thus, a rational economic worker with a calculator might well conclude there was a substantial penalty on bringing at least that portion of one's income above ground. (For explanation of this phenomenon, see Chernick and Reschovsky, Taxation of the Poor, 25 J. of Human Resources 712 (1990).)

Undocumented workers presumably fear that creating a paper trail of their illegal employment is an unwise course. A February 14 article in the Cleveland Plain Dealer quotes a "lifelong American" whose wages would disqualify her from Social Security disability and Medicaid: "Like today, I got a prescription for my heart, $60. Medicaid pays $9." Sissela Bok's admonition about regulations that press individuals to deceive gives welfare rules as the first example. The Nannygate tentacles extend to proposals with respect to welfare reform and inclusive health coverage.

Consider ways to achieve a maximum clearing of the slate. A February 14, 1993 New York Times article quotes Dr. Bok in favoring an amnesty to allow everyone to come clean and to provide a moment to focus attention on the real child care needs of the country. Presumably a well designed amnesty could provide an infusion of tax payments to the Social Security system and improve the future prospects for a substantial number of domestic workers.

Consider how an amnesty should handle the case of employers who are willing to comply but employees (current or former) who are unwilling to be identified because of income tax liability on unreported income, highlighting their presence as undocumented workers, or documenting outside income received while on public assistance. If we wish a national cleansing, I do not think it is healthy to require employers to become informants on employees that might then be subject to severe penalties in order to clear the employer's tax liability. I also would support retroactive application of any increased income trigger so people are cleared of supposed obligations to try and remember the names of every Saturday night sitter to whom they paid $50 in a three month period.

In some instances, employers may have no Social Security number and no idea of how to locate a past employee. In other words, I support an amnesty system allow for a "Jane Doe" filing that identifies willing employers but does not require identification of unwilling employees or former employees for whom there is insufficient information to trace. The record of the employer's payment should provide a sufficient basis to link

payments to the correct employees if they later decide to come above ground and seek coverage.

Your subcommittees focuses today on simplification in payment of taxes for household workers. That is an important piece of the puzzle. I hope your subcommittees and your individual members also will urge attention to additional obstacles to adequate child care, household help, and elder care for working families--along with fairness and respect for the people employed in these important jobs.

Chairman JACOBS. Thank you, Dean Wortham.
Dr. Winnick.

STATEMENT OF LOUIS WINNICK, SENIOR CONSULTANT, FUND FOR THE CITY OF NEW YORK

Mr. WINNICK. The committee is to be commended for its push toward streamlining paperwork and the thresholds of the system, which is woefully out of date. But those reforms, no matter how the compromises come out, will tilt much more to the convenience of the employer than to the concerns of the employee.

Think of how the Zoe Baird case arose. She was hiring a woman at a wage substantially greater than any of the revised thresholds being considered. I doubt very much whether Ms. Baird, as an experienced, educated woman, was annoyed by the paperwork involved. The problem was not the employer, but the employee feared to go on record. That brings me to the underground economy, which several members and panelists have spoken to. It is a huge economy, a huge universe, which raises a host of issues beyond the concerns of this committee. Immigrants are only one component of that universe, and illegal immigrants are only a part of that component.

Every study of the immigrant component indicates a systematic aversion to placing income transactions on the record. Immigrants have a profound distrust of Government, stemming very often from cultures from which they derive. You tell as little as possible to the Government, you leave no fingerprints. Several speakers have alluded to a corollary immigrant concern. To declare one's income and whereabouts to one Government agency is to guarantee a paper chain that will go through every other agency. Some fear being in violation of the IRS. Others have relatives who are criminals or illegal aliens. Why leave fingerprints.

This mistrust of Government came out in full force when the Census Bureau took the 1990 Census, by which time the Nation had a very large immigrant population. Much of the media concern and all of the ensuing State-local lawsuits dealt with the undercount of population. No doubt it was very large figure. In truth, the count of population was superbly conducted, in comparison with the Census count of income. The underreporting of income was massive, notably in immigrant enclaves. That fact emerged whenever there was an independent comparison. The reporting of income by the decennial Census is a near travesty. When surveys pressed for the reasons, they were this: Why tell a Government agency anything? There is no reward for a truthful response and no penalty for a false one.

The gap between reported and actual income emerged in my own study of immigration in New York City. It focused on an immigrant neighborhood called Sunset Park adjacent to Bush Terminal. Sunset Park became an enclave for Dominicans and Chinese immigrants. It is New York City's third China Town. I will not go into all the details, but I was struck at once by the disparity between the economic resources of the immigrants and all official indicators of their economic status.

Immigrant families were able to buy houses in the range, at that time of my study, of $250,000 in Census tracts with incomes not

much above the poverty line and in school districts where 90 percent of the enrollment was eligible for free lunch. One traces deed recordings and the mortgage recordings and finds many of the purchases were for cash. If one delves into those with mortgage financing, one finds another surprise. Much of the capital was obtained from lenders who specialized in so-called no-document mortgage. For a premium added to the interest rate and a substantial downpayment, the lender eschewed the customary validations and credit check. It became a very popular mortgage in the subterranean culture, including the immigrant settlement.

The Small Business Administration conducted a workshop for local businessmen to encourage them to apply for SBA loans. The turnout was substantial among the Dominican and Chinese small businessmen. They took furious notes about all the requisite steps to apply for a loan until the SBA official said, "Of course, your application would have to be accompanied by your most recent IRS return." The pencils dropped and the businessmen picked up their papers and started to go. He said, "Wait, the SBA has forsworn that we would not reveal any data we get to another Government agency." There was total disbelief.

To conclude, the immigrant's aversion to the paper trail suggests that much of the problem, perhaps most of the problem, is centered not on the employer, but the employee. There will be many other Zoe Baird cases for a long time to come, notwithstanding any increased threshold for reporting. As wise and useful as that enactment may be, it will not get to the heart of a more pervasive problem in the domestic-service economy.

[The prepared statement follows:]

IMMIGRANTS IN THE SUBTERRANEAN ECONOMY

Testimony of Dr. Louis Winnick
Senior Consultant, Fund for the City of New York
Joint hearing, Subcommittee on Social Security and
Subcommittee on Human Resources
March 4, 1993

I first encountered the dimensions of the immigrant population's aversion--and not just illegals-- to the paper trail in the course of a study I conducted five years ago, centered on the flow of new immigrants into New York City. The study emerged as a book published in 1990, "New People in Old Neigborhoods". What aroused my research curiosities at the time--an interest that lingers--wwere the ways in which thie new population, mostly hardworking and aspiring, mostly in stable families, were revitalizing New York's decaying neighborhoods. In New York, as innearly all big cities, the past generation was an era of frighteningly huge middle-class outmigrations--nearly a million people during the Seventies alone--inflicting every manner of devastation in its wake. The manifestations are well-known. Entire naighborhoods, many with deep historic roots were virtually emptied, retail stores boarded up, apartment buildings abandoned, churches shut down for want of parishioners.

By the mid-Eighties it became clear, and to the sharp-eyed even earlier, that the new wave of immigrants--the fourth in America's history--was generating a demographic sea change in New York. A steady, rising tide of people--not so long ago 50,000 per year, now upward of 100, 000--first trickled and then poured into an ever-increasing spread of communities. The geographic configurations change every day; New York's immigrant atlas requires a loose-leaf binder. The new people came from a hundred lands, but mainly from Latin America, Asia and the Caribbaan. The predominant nationalities are Dominican, West Indian, Chinese snd Haitian, with sizable numbers from Mexico, Cuba and South America, India, Pakistan and the Middle East.

As the immigrants filtered into the drained communities, they refilled the churches and schools. Retail streets were rejuvenated and the boards came off the store windows. Even in ours current real-estate depression when the New York area's prestigious shopping streets and miracle miles experience unaccustomed vacancies, one sees few if any for-rent signs in the enclaves of immigrant concentration. Although my study's bounderies embraced all of New York, I singled out for closer and more detailed investigation, an old working-class naighborhood in southwest Brooklyn called Sunset Park, adjacent to the world-renowned Bush Terminal. Sunset Park had been the creation of prior waves of immigrants, primarily Irish, Italian and, famously, Scandinavian: Sunset Park was New York's Minnesota and indeed many Swedish and Norwegian families had relatives in both places. These older ethnic populations were among the first to join the exodus to the suburbs and beyond, leaving only small pockets of Irish and somewhat larger pockets of Italians behind. They left behind, too, a century of heritage observable in a diversity of Catholic and Lutheran churches, in the faded signs on storefronts and buildings, in the names of parks and community institutions. As in the strata of an archeological dig one can read in these deposits the settlement hisstory of Sunset Park.

The moribund neighborhood was resettled at first by Puerto Ricans and later, with considerably greater economic vigor, by Dominicans and Chinese. The Dominicans, entreprenurial in spirit, opened bodegas by tha score, soon expanded mini-supermarkets; supermarket chains that had abandoned the area returned as Dominican-owned or managed franchises. The Chinese settlement was a complete surprise. Sunset Park had no prior Chinese population save for a few laundries and a chop suey joint or two. Further research disclosed the stimulus for this unexpected inflow. It was the direct subway connection between Manhattan's old Chinatown and the easterly portion of Sunset Park. Manhattan's old Chinatown, bursting at the seams, its real-estate prices soaring, could not contain the unceasing in-movement. Chinatown's small garment manufactures decanted to Sunset Park's cheap and factory spaces, taking their Chinese-female labor force with them. The women and their families, the husbands usually low-paid waiters and busboys, soon found acceptable housing, more spacious than anything conceivable in crowded old Chinatown. The continuing in-movemnt has accelerated, transforming Sunset Park into New York's third Chinatown and Brooklyn's first.

The Chinese, more entrepreneurial than even the Dominicans, generated a large, still-expanding economic base in the local community,

anchored in the nearby factory establishments and in the restaurant-rows on both sides of 8th Avenue, Sunset Park's Chinese spine. Weekend afternoons on 8th Avenue are reminiscent of Mott St. with legions of patrons from far away.

All this immigrant enterprise also created considerable income and wealth, reflected in a wholesale transfer of two-to-six family houses (larger apartment buildings are rent-controlled, with undisplaceable tenants and thus unattractive to investors). In studying local real-estate markets I found the prices paid for these residences, though well below the levels of nearby higher-class and yuppie neighborhoods were still astonishingly high. How, I wondered did families whose breadwinners were garment workers, waiters and small retailers eke out the purchase price? How did they qualify for the substantial mortgages that delving into deed-recording folios disclosed? That brings me to the immigrants underground economy, a realm of unknowable and unmeasurable realities, but realities with an unmistakable presence.

The realities are twofold. One concerns people, the other income and wealth. Start with people. As produced in evidence in New York' enduring lawsuit against the Census Bureau, the city shelters perhaps a hal-million people not counted in the 1990 census. The city persuaded the Bureau to make correction for demonstrably missed buildings and dwelling units but could not sway it Director to adjust for the far greater ommissions related to the undercount of household size-- the number of individuals rediding within the walls of a dwelling unit. The alleged undercount was most pronounced in minority neighborhoods, doubly with large new-immigrant populations. Census data are self-reported, so that while a small part of the the error might have been due to faulty Bureau procedures the larger part by far was the unwillingness of respondents to tell the census-taker (actually most returns are by mail) the true number of related and unrelated people living in the dwelling. In short and no surprise, the underground economy has a substantial demographic component.

The research in Sunset Park had uncovered that fact even before the 1990 Census imbroglio. In analyzing school enrollments and in interviewing a sampling of community leaders it became apparent that Sunset Park had many more people than could be estimated by adding to the 1980 Census base the net add-ons obtainable from official birth and death data and Immigration and Naturalization files. More directly, in visiting virtually every residential building, it was apparent that many more names appeared on the doorbells than could be justified by the number of legal apartments listed by the Building Department or permitted by the Health Department's occupancy limits. Further, in accumulating a database of telephone listings (an invaluable source for tracing changing ethnic settlements) phone company staff told me not only of the extraordinary increase in installations, quite substantially above their sophisticated damand-projections but also something else. A considerable percentage of the new installation were for multiple lines within the same unit. Two-telephone families are of course a growing trend, but not three or four phones in working-class immigrant neighborhoods. What the installers saw were multiple families living in the same legal dwelling unit their spaces separated by a jerry-built wall or, at times, merely a hanging blanket. The underground population was exposed to the naked eye. The false responses to Census-takers are attributable not just to an illegal immigrant's fear of the immigration offioer but the legal and illegal immigrant's fear of eviction for illegal occupancy.

So much for hidden people. Now let's look at hidden money. None of the income data obtainable fom official sources comported, even by the wildest stretch, with the prices paid by the immigrants for the small houses purchased in Sunset Park. In the span of years covered by my study of the real-estate market--roughly 1983 to 1988--the average price of a two-or three family house rose from the $100,000 level ($35,000 in 1979, with few takers) to a range of $250,000 to $280,000. Compared to Brooklyn's gentrifying housing markets these prices were not especially extravagant. But for a neighborhood in official poverty whose welfare rolls were well above average, and where a preponderance of school children qualified for free lunches, whose Asian-American purchasers were typically in the lower runge of the occupational structure, there were mysteries to be explained. Matching mortgage recordings against the deed transfers it was olear that very heavy downpayments exchanged hands and that not a few transactions were for all-cash. In tracing back the sources of mortgage funds, two feature stood out. A substantial proportion of the borrowers availed themselves of the so-called no-document mortgage whereby for a premium interest rate, aggressive lenders would forgo the customary income validations involved in a credit-check. Another source of mortgage funds were the new Asian banks, rapidly proliferating in immigrant enclaves, holding a different cultural view of

documentation. It needed no Sherlock Holmes to deduce there existed cash accumulations shielded from the eyes of authority, not least the tax collector. One further telltale. At a local workshop, sponsored by the Small Business Administration and attended by local Asian-American businessmen, the SBA official set forth the rules for a loan on easy terms and warmly invited applications. The audience furiously copied down the rules until hearing the last one, whereupon all writing stopped. The most recent IRS return had to be attached to the SBA application. What, asked one businessman, if the income figures on the application supporting the loan were higher than those on the tax return. Not to worry, answered the official. SBA is sworn never to reveal the data to another government agency. Worry they did. In apparent total disbelief, the audience dispersed, taking no applications with them.

The most important lesson of my research germane to your Committee's labors is not the existence of a massive subterranean immigrant population and economy that shrinks from light as reflexively as Count Dracula from the crucifix; the Members are long familiar with that phenomenon. The larger lesson is of the immigrant's a innate distrust of all authority, so deeply ingrained that it will not readily be assuaged by assurances of inter-agency confidentiality.

That lesson bears directly on the proposed legislation catalyzed by l'affaire Zoe Baird. The Members deserve every commendation for their effort to rationalize and streamline the paperwork attached to the employment of domestics, the occupation that draws so heavily from immigrants, but so many of whom of apprehensive of the paper trail. A substantial increase in reportable threshold earnings and a stretchout of the reporting intervals should do wonders to ease the transactional burdens of both employer and employee. Among other things, it should much to bring about a better-functioning "nanny market" But the greater gain and convenience is likely to tilt toward the employer. A host of desirable domestics resist working on the books not merely to escape the hassle of Social Security or even the burden of the income tax on recorded earnings. The cognate fear is of an inter-agency chain, that once on record, how may it lead to INS and what will it mean for their husband's immigration and IRS status or their childrens' means-tested school lunches or their illegally occupied apartments. Even some with green card are not free of such concerns.

Invisibility is not costlessly surrendered or compromised. As long as the U.S. is condemned to a subterranean society, where entrances at least equal the exits, the Zoe Baird, Kimba Woods unhappinesses are likely to persist.

Chairman JACOBS. Thank you, Mr. Winnick.

Dean Wortham, what would you think of an amnesty that only applied to those whose employers whose total payments a quarter did not exceed what the 1950 figure of $50 would have been at a given time, if wage indexed? I am saying total amnesty, I am talking about tax liability, as well, on the theory that the Government was not a bit negligent in raising the amount to qualify, but was obviously quite negligent on raising the amount to be liable.

Ms. WORTHAM. I absolutely think that the liability under the amnesty should be calculated on a new threshold figure. The $50 threshold reaches too many casual baby-sitters that one could not even recall.

Again, my touchstone is coverage of the one-day-a-week person, every-other-day-a-week person. I would calculate the market rate for that person, and that would be my threshold. You might also achieve the same end by adding a regularity test. I absolutely agree with you that that threshold should be retroactive, since my view is we should have laws that can be sensibly enforced.

Chairman JACOBS. Well, speaking of Catholic University, I remember my sister saying when the Catholic Church changed its rule about taking a drink of water after midnight, it being a sin to go to communion the next day, she wondered when they changed the rule, if all the people who had a sip of water after midnight all those hundreds of years would be released from hell. So that is something to ponder a little bit. [Laughter.]

Thank you both for your contribution to the record.

I am sorry. I apologize to the next two panels, but we need to recess just for a few moments. I need to go over and cast two votes in tandem, and we will resume at the very moment the second vote is cast and we can physically return to this room. In the meantime, enjoy.

[Recess.]

Chairman JACOBS. The hearing will come to order.

The panel that I announced before I shall now announce again: Ms. Williams and Ms. Sledge, if you are here, please come forward. The subcommittee apologizes to you for the delay. We run into this all the time.

Ms. Williams, you are listed first, please proceed in your own way.

STATEMENT OF DIANE WILLIAMS, WASHINGTON, D.C.

Ms. WILLIAMS. Mr. Chairman and members of the subcommittee, I am a resident of the District of Columbia. I appreciate this opportunity to appear here today to give my views on the constant media attention on illegal aliens and nonpayment of taxes under the Immigration Reform and Control Act of 1986. There should be equal media coverage on the thousands of black and white Americans who have lived here legally, worked for years as domestics and day workers, yet never got anything but pay and sometimes car fare.

Speaking from personal experience, my mother worked for years for different families, including a practicing attorney who never paid a cent. Only one family paid her taxes and Social Security. Based on those payments, she receives $100 a month in Social Security.

My mother's friend worked 5 days a week for years, but her employers never paid her taxes and Social Security. When she became eligible for retirement and filed for her benefits, she was denied, because none of her employers had paid.

Were these employers ignorant of the laws? I believe they wanted employees, but they either could not afford to abide by the law, or simply chose not to. Under either circumstance, the employees have suffered upon retirement.

Even now, there are still workers for whom employers do not pay Federal, State and Social Security taxes. They are simply paid cash. This kind of abuse did not start with illegal aliens, but has been happening for years to employees who do not know the law.

This concludes my statement, and I will be happy to answer questions.

Chairman JACOBS. Thank you, Ms. Williams.

Ms. Sledge.

STATEMENT OF QUEEN E. SLEDGE, WASHINGTON, D.C.

Ms. SLEDGE. Good afternoon, Mr. Chairman.

My name is Queen Sledge. I am a resident of the District of Columbia. I have been troubled by all of the media coverage being given to the illegal alien issue since Zoe Baird was thrust into the news for hiring an illegal alien. The media has created the false impression that employers' failure to pay Social Security taxes is a recent problem that affects only illegal aliens. I am troubled, because everyone acts as if employers' failure to pay Social Security taxes for employees is something that just happened this year, when, in fact, this has been going on for decades.

I can remember in 1955 my mother answered an ad in the newspaper for a live-in maid in Norfolk, Va., which was about 90 miles from where my home was. She came home on weekends, and my grandmother came and took care of us during the week. My mother worked in this job for many years, but her employers never paid Social Security taxes, which left my mother without disability protection during her working years and vulnerable to low benefits when she reached the age of retirement.

In the late 1960s, I, too, worked as a domestic worker and was paid cash. No one paid Social Security taxes for me. When my mother saw me following in her footsteps, she talked with me about low wages and low benefits and urged me to do better. Luckily, I found other employment that paid my Social Security taxes, so I will not be faced with the same dilemma as my mother.

However, there are still countless other people who are still in the same position as my mother. Hopefully, they will benefit from the publicity being given to this issue, so that they will be able to have a decent income at retirement.

Thank you for the opportunity to appear here today, and I will be pleased to answer questions.

Chairman JACOBS. Mr. Bunning.

Mr. BUNNING. Could I ask you both the same question: When you and/or anyone you knew went to work in those situations, was there any contact or agreement made between you and your employer that you would rather have cash and you did not want So-

cial Security withheld, because of the position or the amount of money you might have received had they withheld from your pay?

Ms. SLEDGE. It may seem that I was ignorant of the law, but at the time I did not know anything about people withholding Social Security taxes for day workers. This was in the 1960s.

Ms. WILLIAMS. This is the same thing that happened to my mother. She did not know. When she went to work, all they would give her was cash and sometimes car fare. She did not know. A lot of people do not know. They just assume this is what happens, this is how you get paid. They did not know they had to pay taxes or Social Security.

Mr. BUNNING. If you were here earlier, some of the prior people asked the question that there could be a possibility that there would be an advantage of being paid in cash, particularly if you had some other social benefits coming like food stamps, like social welfare benefits under other systems other than Social Security and/or withholding taxes. That is why I asked the question.

Ms. SLEDGE. Well, that could be true for a lot of people, but I have been fortunate, I have never been on either one. I have never been on welfare, food stamps or any of them. I have always worked.

Ms. WILLIAMS. My mother has never been on public assistance, so that did not affect her. This happened when I was in elementary school. This happened in the 1960s, and she had to have some kind of income, and the only thing she could do was day work, and it was just assumed that they paid her cash.

Mr. BUNNING. Thank you.

Chairman JACOBS. I think, Ms. Williams, you mentioned either your mother or you were employed by a lawyer?

Ms. WILLIAMS. My mother was employed by a lawyer.

Chairman JACOBS. So you might infer that someone trained in the law would have known or at least known enough to do some checking up about what his or her obligation might have been with respect to the Government requirements. Do you think it is fair to say that a lot of other employers did not know they were employers in the sense of Social Security? We have a lot of testimony today to indicate that they just did not know, and that $50 was a realistic figure in 1950, when I think the average weekly wage then was $5,000 for all people in the United States. But the question is do you suppose or do you even have experience where employees did not even know they were employers, they were just as ignorant of the law as maybe the person who worked for them?

Ms. WILLIAMS. I think a lot of people were just ignorant of the law and just did not know any better. I am not sure about the employers, but as far as employees, I just think they are ignorant of the law.

Chairman JACOBS. The hope I have is that the mass of publicity that has already occurred, these hearings, and anything we might do to modify the law and simplify compliance with the law, will educate the public as to its obligations with regard to domestic service. I think Mr. Bunning and I and the other members of the committee, the other member of Congress and I suppose everybody in the country would hope that, in consequence of the publicity, in consequence of these hearings and in consequence of efforts to sim-

plify the law where it is payable once a year with the employer, technically, the householder's 1040 income tax and an adjusted threshold that matches the one in 1950, with all that, we might reasonably expect an enormous upsurge in compliance, so that what befell your mother would not likely befall other people from now on.

So we thank you for your contribution to the record. I will tell you, all the experts in the world are usually people from out of town, all the experts in the world can tell you with charts and graphs and figures and inferences and all that what the problem is, but the people who are engaged in the activity can put those people to shame. So we really appreciate your contribution for the record.

Ms. WILLIAMS. You are welcome.

Ms. SLEDGE. Thank you.

Chairman JACOBS. Thank you very much. Our final panel consists of a representative of the National Council of Senior Citizens, Kurt Vorndran, and the National Senior Citizens Law Center, represented by Ethel Zelenske.

Mr. Vorndran, you are listed first, if you will proceed. We do have a 5-minute rule, but you can have 5 minutes. We have never indexed that, it has always been 5 minutes. On the other hand, there has not been too much inflation in time available that I have noticed.

Mr. BUNNING. Nor compliance.

Chairman JACOBS. We have a lot of noncompliance. In fact, when the IRS representative was testifying for about 15 minutes, at one point I actually thought of asking him if he would like to file for an extension. [Laughter.]

STATEMENT OF KURT VORNDRAN, SENIOR POLICY ANALYST, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. VORNDRAN. Good afternoon, Chairman Jacobs and members of the Ways and Means Subcommittees on Social Security and Human Resources.

My name is Kurt Vorndran, and I am the senior policy analyst for the National Council of Senior Citizens. On behalf of our 5 million members and 4,000 local clubs and councils throughout the country, we are happy to present our views today on this important matter.

Let me add, Mr. Chairman, that it is particularly appropriate today, in which 60 years and an hour and 10 minutes ago, President Roosevelt took his oath of office for the first time, the President who gave us the Social Security system.

The National Council of Senior Citizens is very concerned with all components of Social Security. Social Security provides critical income security and health care benefits for 37 million Americans. We view the protections offered by Social Security as important for all persons, but particularly those in low-wage and low-benefit industries such as domestic work.

The National Council of Senior Citizens recognizes the legitimacy of raising the Social Security wage threshold and simplifying reporting requirements. In fact, we fully endorse Chairman Rostenkowski's proposal to allow employers of domestic workers to file

their FICA tax payments for their employees on their personal tax returns. It can be expected that this would increase compliance and, therefore, expand Social Security benefit coverage for household workers.

However, simplification is not enough. The Social Security Administration needs to do a better job in explaining to employers of domestic help their duties and obligations. Mr. Chairman, employers who wish to comply with the law are confronting the same problems that Social Security beneficiaries face.

At previous hearings, the National Council of Senior Citizens have brought these problems to your attention—insufficient staffing levels, underfunding of SSA resulting in telephone busy signals, undertrained staff, and a failure to publish and disseminate materials to the public. In recent weeks, our office has received numerous calls from employers of domestics and other household workers who want to comply with the law, but are finding it difficult to obtain the necessary information from SSA.

This is not a duty which NCSC feels that we are particularly called to do, and we feel it represents a failure of SSA to be able to fully implement its mission.

The second issue which I would like to address is the raising of the threshold. NCSC is more cautious on this matter. We feel some relaxation of the threshold would be constructive, and would encourage increased compliance by employers, resulting in improved benefits for future claimants, while having a neutral impact on the trust fund.

An amount in the range of $1,000 per annum would be acceptable. Our reluctance to raise it any higher is to protect household workers who have multiple employers from lack of coverage by Social Security. NCSC suggests that the Congress initially enact a modest relaxation, while simplifying reporting and expanding public education. At a future date, Congress should revisit the issue of a further increase in the threshold.

Mr. Jacobs, I appreciate the opportunity to testify before you today and would be happy to answer any questions which the committee may have.

Chairman JACOBS. Thank you, Mr. Vorndran.

Ms. Zelenske.

STATEMENT OF ETHEL ZELENSKE, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Ms. ZELENSKE. Good afternoon. Thank you for inviting me to testify today.

My name is Ethel Zelenske. I am a staff attorney at the National Senior Citizens Law Center. Prior to that, I was an attorney at the Legal Aid Bureau in Baltimore, Md., for 14 years, where I specialized in Social Security law.

Representative Meek very eloquently described the group that is most hurt by underreporting of wages. The most harsh consequence of underreporting is that it contributes to the impoverishment of poor elderly women and, in particular, poor minority women who are one of the most vulnerable groups in our society.

It is no surprise that women comprise for the most part domestic workers and that minority women are overrepresented in the occu-

pation compared to their percentage in the overall general population. Low-wage occupations such as domestic work contribute to women having lower Social Security benefits than men.

My written statement discusses a fairly recent Social Security study that indicates that four times as many women as men have monthly benefit amounts below $350. Of course, the ultimate consequence of underreporting is that workers will be eligible for no benefits, because they lack insured status.

It is not only the worker who is affected by underreporting, the family members also are, since dependent benefits and survivors benefits are derivative from the wage earner. A wage earner who receives nothing means the family gets nothing. A wage earner who gets benefits that are too low means the family gets benefits that are too low.

When the benefits are too low, the worker then becomes more dependent on public assistance benefits such as SSI. Reliance on the SSI program is misplaced. While it is a laudable program, it still provides benefits that are well below the poverty level, and as many as 50 percent of poor elderly people do not receive SSI, even though they would be entitled to it. Of course, there are the public policy considerations, SSI benefits are paid out of the general fund versus outlays from the self-supporting title II trust fund.

My written statement also discusses the fact that underreporting affects the health and health insurance coverage of poor women. Because of inadequate income, they may be forced to work longer than they wish, even though they have poor health and suffer from functional limitations.

A Census Bureau study indicates that is true: African-American women are more likely to suffer from chronic conditions and are also more likely to work with functional limitations.

They also may be forced to retire early due to the disability. If they do not have enough coverage for title II disability benefits, they are going to have to rely on SSI disability benefits, which results in more reliance on that program.

And then there are also the issues about whether they are eligible for Medicare or medical assistance coverage. A recent GAO report indicated that only one out of three poor elderly people receive medical assistance. All of these consequences which are very serious affect a vulnerable population and are caused, in part, by underreporting of wages.

My written statement also discusses some suggestions we have for improving the system. I feel that it is important to try to have some tools that allow for contemporaneous reporting of wages, something that would allow a record, and that would make it easier for employers and employees to submit the information to the appropriate agency.

Mr. Enoff earlier talked about the personal benefit statement which allows employees to reconcile their earnings with what was reported. However, that is after the fact, and I strongly believe in preventive measures as opposed to reactive measures. This is especially important if you move to the annual reporting, which we support, because it is easier for employers. But people's memories get fuzzy about what they have paid out, and I think anything that would assist them in keeping records would be useful.

I strongly feel that the threshold has to be kept low. Many workers work for a number of different employers, and although any one employer will not give them a quarter of coverage, the aggregate of the different employers will.

I also am a very strong believer in educating workers and empowering them. They need to be educated about the benefits of the Social Security system and to believe in it, that it will provide for them, at least in part, for their future economic security. They also need to be informed about any income tax relief that may be available to them.

These kinds of public information campaigns can work. The most recent successful effort has been regarding cases to obtain SSI for children. It has been very successful. I think that could be used as a model.

Also, I agree with any efforts to provide stricter enforcement of the law.

[The prepared statement follows:]

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NATIONAL SENIOR CITIZENS LAW CENTER
BEFORE THE SUBCOMMITTEE ON SOCIAL SECURITY, AND
THE SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES**

HEARING ON PROPOSALS TO SIMPLIFY AND STREAMLINE THE PAYMENT OF EMPLOYMENT TAXES FOR DOMESTIC WORKERS

MARCH 4, 1993

Thank you for the invitation to appear before the Subcommittees today. I appreciate the opportunity to address the proposals to simplify and streamline the payment of employment taxes for domestic workers.

The National Senior Citizens Law Center (NSCLC) is a legal support center funded primarily by the Legal Services Corporation. NSCLC works with legal services and advocates for the elderly across the United States on the legal issues facing their elderly and disabled clients. I work solely on Social Security and Supplemental Security Income (SSI) issues. Prior to my employment at NSCLC, I was an attorney for fourteen years at the Legal Aid Bureau, Inc., in Baltimore, Maryland, a statewide program which provides free civil legal services to indigent residents of Maryland. While I was at the Legal Aid Bureau, I represented hundreds of clients administratively and judicially regarding their claims for Social Security and SSI benefits.

Because women, in particular minority women, comprise the majority of domestic workers,[1] they bear a disproportionate share of the burden when wages are not reported and employment taxes are not paid. The consequences of underreporting contribute to impoverish an already vulnerable segment of our population. Because of noncompliance in reporting wages, many domestic workers who are retired or disabled -- as well as their dependents and survivors -- do not receive the full social security benefits to which they are entitled.

The following cases illustrate the problems with the current system and the consequences when employers fail to report wages:

- A 61 year-old African-American woman applied for Supplemental Security Income (SSI) disability benefits due to colon cancer and anemia. She had worked as a housekeeper

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[1]Cynthia M. Taeuber, *Sixty-Five Plus in America*, p. 4-4 (U.S. Bureau of the Census. Current Population Reports, Special Studies, P23-178) (Aug. 1992) (hereafter "Census Bureau Report"). In 1987, about 50% of employed African-American women aged 55 to 64 and nearly one-third of Hispanic women that age were employed in "service" occupations. This compared to 1 in 6 White women.

for many years and had only stopped working earlier in the year due to her debilitated condition. She sought legal assistance after her application was denied at the initial and reconsideration levels, because, according to the state agency physician, she could return to her "past relevant work."

In the interim, she turned 62 years old and received a very small Title II retirement benefit, approximately $200 monthly, but had no medical insurance. This was her only income for the remaining few months of her life: the favorable Administrative Law Judge decision (which was expedited and made on the record) was issued the same day that she passed away.

- A 66 year-old woman sought legal assistance because her Social Security retirement benefits which she had started receiving at age 65 were lower than expected due to the fact that her employer had not paid any Social Security taxes. She had been employed by the family as a domestic for a number of years, earning $45.00 for the one day per week she worked for them.

  When the woman approached the employer, he acknowledged that the Social Security taxes should have been paid and offered to reimburse her either by a lump sum or through payment of back taxes. However, because she had not declared the wages as income, she was afraid of penalties from the IRS and decided not to pursue the case. The woman received only $300 per month in retirement benefits. Following her attorney's advice, she applied for and received SSI to supplement the Title II benefits.

H.R. 13 will help to resolve the problems described in these cases. In addition to the provisions in H.R. 13, I offer several suggestions which are discussed below: (1) providing tools, such as forms, to ensure accuracy in wage-reporting; (2) better education for workers regarding the Social Security system and other programs available to them, such as the Earned Income Tax Credit; and (3) better monitoring and enforcement of the law.

THE CONSEQUENCES OF NONCOMPLIANCE.

1. **Domestic workers are more likely than other workers to receive less than the full Social Security benefits to which they are entitled, contributing to their financial hardship.**

When employers fail to report wages, domestic workers do not receive their full Title II benefits--retirement or disability. An even harsher consequence is that some workers will not be eligible at all for Social Security benefits because they lack "insured status."

While not the sole factor, underreporting of wages for domestic workers contributes to the problem of women receiving lower Social Security benefits than men.[2] Not only do women

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[2]At a 1992 hearing before the Subcommittee on Social Security, numerous witnesses testified about the continuing inequities for women in the Social Security system. *Women and Social Security: Families are Changing, The Workplace is Changing, Should Social*

generally have lower primary insurance amounts (PIA) than men,[3] but four times as many women as men have PIAs below $350 per month.[4] These disparities are even greater when PIAs of minority women are compared.

The real consequence of noncompliance is the financial hardship imposed on women who are most dependent on the benefits for retirement income. More women than men rely on Social Security income for a higher percentage of their income. For many, it is their only income. The impoverishment of elderly women, in particular, minority women, is starkly portrayed by a recent General Accounting Office (GAO) report (hereafter "GAO Report") regarding gaps between poor and nonpoor elderly Americans[5]:

- Elderly women were nearly twice as likely as elderly men to be poor or near poor.
- Elderly Hispanics were twice and elderly blacks three times as likely as elderly whites to be poor or near poor.
- The additive effect of sex, race, and age was dramatic: More than half of all black women over the age of 75 were poor or near poor in 1990.[6]

According to the GAO Report, the disparity between the poverty of elderly men and women indicates that factors such as low or nonexistent earnings more negatively affect the economic status of elderly women than that of men.[7]

2. **Dependents do not receive the full Title II benefits to which they are entitled.**

The domestic worker is not the only victim when wages are not reported. If a wage-earner is eligible to receive disability or retirement benefits, there are derivative benefits for certain family members including spouses, minor children and adult disabled children. Survivors benefits are also available.

Thus, a PIA which is low and does not accurately reflect the wage-earner's work history will have detrimental effects for other family members. A more extreme consequence results if inadequate wages are reported so that the worker is not fully insured, because the family as well as the wage-earner will receive no benefits.

Security Change Too?, Subcomm. on Social Security of the House Comm. on Ways and Means (April 8, 1992).

[3] At the end of 1990, the average monthly benefit for retired women workers was $519, only 76% of that for retired men ($679).

[4] According to a 1990 study by SSA based on 1988 statistics, 40% of retired women workers had PIAs below $350 per month, compared to 10% of men. *See* Barbara A. Lingg, *"Women Beneficiaries Aged 62 or Older, 1960-88,"* Soc. Sec. Bulletin (July 1990), pp. 2 and 6.

[5] ELDERLY AMERICANS: Health, Housing, and Nutrition Gaps Between The Poor and Nonpoor (GAO/PEMD-92-29, June 1992).

[6] Id. at 2.

[7] Id. at 17.

3. **Workers must rely more on public assistance benefits.**

Minimizing the failure to report wages because the worker may be eligible for means-tested benefits such as Supplemental Security Income (SSI) benefits obfuscates the problem. At any rate, receipt of Title II benefits is generally preferable to receipt of SSI benefits.

First, the current SSI benefit rate is only 75% of the poverty guideline, whereas Title II monthly benefits vary according to reported earnings.[8] Second, eligibility for SSI offers no derivative benefits to family members. Third, there are public policy considerations: SSI benefits are paid from general funds, whereas Title II benefits are paid from the self-supporting Title II trust funds.

Another important consideration is that for older persons between from age 62 and up to age 65, the only way to qualify for SSI benefits is based on disability. As exemplified by the case described above, proving "disability" as opposed to "age" is a more difficult and lengthy process.

Reliance on SSI to fill the gap may be misplaced since many poor elderly persons who are eligible do not receive SSI. According to the GAO Report, a substantial percentage, about 50%, of poor elderly persons do not receive assistance from means-tested federal programs, including SSI, which are designed to serve the poor.[9]

In addition, some workers receive Title II benefits which are too high to qualify for SSI but which are still below the poverty guideline. As the GAO noted, Social Security benefits do not ensure elderly persons of incomes above the poverty level.[10]

4. **Noncompliance affects the health and medical insurance coverage of domestic workers.**

Low income elderly persons experience poorer health than their wealthier counterparts and are considerably more likely to endure limitations in their daily activities.[11] Poor women, in particular African-American women, are more likely to suffer from chronic conditions, such as arthritis and hypertension, which impose functional limitations.[12]

Because of inadequate income, domestic workers may be forced to work past retirement age, despite ailing health, as in the case described above.[13] On the other hand, because of the strenuous nature of domestic work, some workers are forced to

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[8]SSI benefits are however available to workers whose monthly Title II income is less than the SSI monthly benefit.

[9]GAO Report, p. 42.

[10]GAO Report, p. 3.

[11]GAO Report, pp. 25-26.

[12]Census Bureau Report, pp. 3-11 to 3-15.

[13]According to the Census Bureau Report, elderly African-American women are more likely to work than other groups when they have a functional limitation "perhaps because of their limited economic resources." Id. at 3-17 (citation omitted).

stop work at an earlier age because they become disabled.

Engaging in domestic work thus becomes a double-edged sword: it contributes to the worker's deteriorating health but, because of low reported earnings, the worker is forced to either stop work early or continue to work when it is not medically recommended.

Disabled domestic workers under age 65 are eligible for Medicare only if they receive Title II disability benefits and after a waiting period of 29 months. Even for those eligible for Medicare who are disabled or age 65, substantial medical expenses are still incurred. While they could obtain Medicaid to pay some of these expenses, reliance on Medicaid, as with SSI, is misplaced since participation by eligible elderly persons is limited: only 1 of 3 poor elderly persons were enrolled in 1990.[14]

HOW TO IMPROVE THE PROCESS.

1. Adopt the provisions in H.R. 13.

We support the provisions to simplify and improve the wage-reporting process included in H.R. 13. Annual reporting should simplify the process from the employer's perspective. Increasing the threshold to $300 annually should not generally be detrimental to domestic workers, including those paid small amounts by several employers. However, several concerns should be addressed.

First, the process should ensure that all wages are reported. Annual vs. quarterly reporting may affect the accuracy of wage-reporting because employers may forget when and how much wages were paid out. A form which allows for contemporaneous record-keeping by the employer and the worker would alleviate this problem.

Second, the threshold should not be raised to a significantly higher amount as some have suggested. Such an increase would affect those workers who are employed by a number of different employers on perhaps a one-day per week or every two weeks schedule. While their earnings from any one employer would be small and not qualify for a quarter of coverage, the aggregate wages from all employers would.

2. Provide better education about the system for workers.

It has recently been reported that there are many employees who do not want Social Security taxes paid for a variety of reasons including: (1) they might become subject to income tax; (2) they do not see the value of having Social Security coverage; (3) they fear that the income will cause them to lose retirement benefits under the earnings test. Education of employees will help to rectify this situation.

a. Provide information about the Social Security system.

Workers should be informed about the Social Security system and how they will be better off if Social Security tax is paid on their earnings as a domestic worker. While they may be focussing on their current financial needs, workers should be educated

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[14]GAO Report, pp. 5 and 22-23.

about the economic security provided by the Social Security system.

b. Provide information about tax consequences.

Workers should know that their earnings may be too low to be taxed and that they may be eligible for the Earned Income Tax Credit (EITC). Information about the EITC should be disseminated in a more effective manner by SSA or the IRS, rather than by employers.

c. Provide information and tools to ensure accurate wage-reporting.

Workers should be provided with forms that will allow them to maintain contemporaneous records. As described above, these forms would help to ensure that wages are accurately reported in a timely way. The forms could also be useful for other purposes, such as filing income tax.

Benefits earnings statements from SSA do not resolve this problem. Many domestic workers may be unaware that they are available or how to obtain the statements. Once reviewed, they may not know that discrepancies can be amended or what the procedure is for amending the statement.

In addition, as described in the case above, it is very difficult to amend the earnings statements after a lengthy period of time has passed: employers cannot be located or have died, the worker cannot remember the employer, the employer may not remember the worker, or it is impossible to reconstruct the wages paid. Further, both the employer and the employee may fear penalties from the IRS.

3. Better monitoring of the law.

Better enforcement of the law is necessary. It appears that both IRS and SSA have been reluctant to allocate resources to monitor enforcement of FICA taxes. The failure to enforce the law results in unpaid taxes and causes more public assistance expenditures. More importantly, it undermines the value of the social insurance system for millions of Americans who do not receive the benefits to which they are entitled.

This problem may be rectified by the provisions in H.R. 13 regarding use of personal income tax forms to file Social Security. Both SSA and IRS should be held accountable to ensure that wages are properly credited to earnings records and that penalties are used where appropriate. Strict enforcement will encourage employers to report wages.

Chairman JACOBS. Thank you, Ms. Zelenske.

Mr. Bunning.

Mr. BUNNING. I would just like to make this statement. I would like to underscore your testimony, Ms. Zelenske, that the real consequences of noncompliance is the financial hardship imposed on women who are most dependent on the benefits for retirement income. Your testimony is so comprehensive, I would like to make it required reading for all domestics and their employers.

Ms. ZELENSKE. Thank you.

Mr. BUNNING. Unfortunately, some of us have a problem in reading all of the things that are given to us, but everybody on our subcommittee and the full Committee of Ways and Means that are going to deal with this problem should at least make the effort to read your testimony. I think you have done a very good job, and thank you very much for testifying.

Ms. ZELENSKE. Thank you very much.

Chairman JACOBS. Mr. Vorndran, when the average weekly wage was $5,000 per annum, as I said a moment ago per annum, the threshold for obligation under the Social Security tax was $50. Do you think that was too high then?

Mr. VORNDRAN. That is a little before my time.

Chairman JACOBS. Well, I suppose Columbus landing here in the Western Hemisphere was before your time, too, but I take it you can think back a little bit abstractly for us.

Mr. VORNDRAN. Our desire would be——

Chairman JACOBS. How much before you time?

Mr. VORNDRAN. There is no plan to extend the notch to my birth year, I know that.

The desire of the National Council of Senior Citizens would be to see people covered to the maximum degree possible, and obviously when the figure is too low, there is a failure to comply, and a figure which is too high is going to cause a lack of coverage. It is going to be a difficult test, exactly where that happy medium is, and we would suggest that the committee keep an open mind, but move cautiously in raising the figure.

Chairman JACOBS. I have a feeling that in determining what is rational for a threshold of payment that we ought to take an account, first of all, what the Government has decided is rational for a threshold for credit.

There are some people probably obtuse enough to believe that if you pay a dollar into the Social Security system, you should get credit for it. The way the law is now, because of lack of attention, there is a disparity there.

It is asymmetric now, but in 1950 it $50 and $50. So at a loss to determine what the figure ought to be now, one wonders if one should not go back and benefit from the thinking that went into the $50 versus $5,000 average weekly wage then, which leads some members of this committee to the wage index since then, which, by the way, is greater than the consumer price index, hence, the greater prosperity of the country.

So I just think we will probably be inclined, most of us, to take that into very serious account. Does that offend you?

Mr. VORNDRAN. I think there is a strong argument for that. The counterargument would be for those individuals who have multiple

employers and, therefore, could earn a quarter while receiving less than that——

Chairman JACOBS. But you do not assume that was not the phenomenon in 1950, do you?

Mr. VORNDRAN. No, obviously, that existed at that time.

Chairman JACOBS. So that must have been taken into account, as well.

Ms. Zelenske, I endorse heartily the comment by my colleague, the cochairman, Mr. Bunning. I thank both of you for what we used to call in law school a very meaty statement. It does not fit for me any more, since I am a vegetarian, so a very nourishing statement.

At this point, without objection, we will make a part of the record a statement on this subject from the AARP, American Association of Retired Persons.

[The prepared statement follows:]

STATEMENT OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS

The American Association of Retired Persons (AARP) submits the following statement for the record of the hearing on employment taxes for domestic workers. AARP commends the Subcommittee on Social Security and the Subcommittee on Human Resources for examining this issue. The Association is particularly concerned about the impact on the employee and on the Social Security trust funds when payroll taxes are not withheld.

As events of the past few months have highlighted, some who employ domestic workers are unaware of and others may evade their lawful obligations. Some employees may not know about these requirements and others may prefer to avoid withholding so as to maximize their earnings. Regardless of the reason, failure to pay Social Security taxes can prove disastrous for both employee and employer.

Federal law requires employers who hire people to work in their home, unless they are a bona fide independent contractor, to withhold and pay employment taxes when the employees' wages exceed specified thresholds. For purposes of paying Social Security taxes, if the $50 per quarter wage threshold is reached, employers must begin withholding taxes. Employers also are required to remit the withheld taxes to and file quarterly reports (Form 942), end-of-the-year wage and tax statements with the Internal Revenue Service (IRS), and also to provide workers with a copy of the yearly wage report (W-2). In addition, the employer must obtain an employer identification number for purposes of filing wage reports. Once the IRS notifies the Social Security Administration (SSA) of the withheld payroll taxes, they are credited to the Social Security trust funds and workers' wage records are adjusted accordingly.

Although these requirements are over fifty years old, the IRS reports that only about 500,000 employers of household help comply. IRS data suggest that an estimated 1.5 million employers violate the law. However, a Bureau of Labor Statistics' survey found that approximately 7 million households spent money in 1991 for "housekeeping services". Not all of these households would be required to withhold payroll taxes since some help is occasional, i. e. wages of less than $50 per quarter. Given the uncertainties about the number of affected domestic workers, the amount of unreported taxes and the resultant loss to the Social Security trust funds is difficult to estimate.

Some employers -- whether they withhold payroll taxes or not -- lament the paperwork that compliance entails. This is understandable. However, non-compliance could result in a substantial financial hardship if the employer has to pay the taxes owed as well as the penalties for noncompliance.

The larger hardship, however, is sustained by the domestic workers, most of whom are women. If payroll taxes are not properly withheld, household workers will be deprived of the full benefit to which their work entitles them. A domestic worker will be declared ineligible for benefits if payroll tax contributions have not been made on her behalf or she will receive a smaller benefit because insufficient taxes were withheld.

When a household employee files for a benefit, it is usually too late to substantiate previous employment. SSA data show that while domestic employees make up slightly less than 5 percent of the population, they account for 10 percent of the workers with problems in their earnings record.

Once domestic employees stop working, they may be forced to spend their remaining years in poverty or on its edge because their earnings record was incomplete or, even worse, nonexistent. This is doubly tragic because the progressive Social Security benefit formula provides low-wage earners-- the category into which most domestic employees fall -- with a greater return on their contributions than average and high earners receive. Also, a Social Security benefit is adjusted annually for inflation to help recipients keep pace with the rising costs of goods and services. Without an inflation adjusted benefit, the retired or disabled domestic worker will fall further behind economically.

Given the meager salaries domestic workers earn during their working life, they are unlikely to have any savings to sustain them even if they receive a modest Social Security benefit. Without

the proper benefit, many of those employed in households during their working lives may have to rely on the Supplemental Security Income (SSI) program-- if they are lucky enough to know about it and/or are able to overcome the hurdles associated with receiving and retaining SSI. An SSI benefit, however, will not eliminate the recipient's poverty because the maximum federal benefit for a single individual is less than 80 percent of the poverty level. Additionally, some domestic workers are ineligible for benefits because even their meager assets exceed the modest SSI thresholds.

Some married domestic workers may not want payroll taxes withheld because they expect to receive a spousal Social Security benefit. However, they lose out on valuable disability and survivor benefits for themselves and/or their families while they are working. And, if the worker's marriage lasts less than ten years, she is ineligible for a divorced spouse benefit.

Given the problems caused by nonpayment of employment taxes, more should be done to encourage lawful behavior. Since the $50 threshold has never been raised, serious consideration should be given to increasing the amount to a more reasonable level. In addition, employer reporting requirements should be simplified and annualized. Modifying current law, as outlined last year in H.R. 11 ($300 threshold and annualized reporting), could lead to greater compliance. Whatever changes Congress may decide to make, they ought to reflect the needs of the employer and the employee.

In addition, AARP urges the Social Security Administration to undertake an ongoing public education campaign. If employees and employers understand the consequences of their decision regarding payroll taxes, many future domestic workers may not suffer the economic fate that some currently retired and disabled household workers endure.

Chairman JACOBS. Thank you all very much.

I think this concludes the hearings. Thank you.

[Whereupon, at 1:18 p.m., the joint subcommittee hearing was adjourned.]

[Submissions for the record follow:]

Honorable Andy Jacobs, Jr., Chairman of Subcommittee on Social Security

Honorable Robert T. Matsui, Acting Chairman, Subcommittee on Human Resources

SUBMISSION TO HEARINGS
BEFORE THE
WAYS AND MEANS COMMITTEE

SUBCOMMITTEE ON SOCIAL SECURITY
SUBCOMMITTEE ON HUMAN RESOURCES

STATEMENT

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This statement is in reply to certain questions raised by members of the above Subcommittees during the Hearings on Streamlining the Procedure for Payment of Employment Taxes for Domestic Workers and to offer some comments as to possible pragmatic solutions regarding the shared concern for (1) enacting laws which will clearly set forth a citizen's tax obligations, (2) provide needed security for domestic providers, and (3) provide efficient mechanisms by which household consumers and domestic providers can easily understand and comply with their respective federal tax obligations. An equally important aspect of the problem relates to a massive failure on the part of the household consumer and the domestic provider to report payments for services as income for the purpose of computing federal income tax, Social Security tax, and federal unemployment tax.

No one has determined the actual loss in revenue due to non-compliance in the reporting of income in this area, but the percentage of compliance, depending upon clarification of the law as discussed herein, is certainly far less than 25 percent. Some domestic providers specifically request that payments not be reported to various government agencies so as to avoid loss of unemployment, welfare and social security benefits. Unfortunately, the result is that many domestic providers have no health insurance benefits and may not be covered by Social Security. Representative Meek's testimony concerning the number of domestic workers who are not presently covered or may not be covered by the reform proposals under Social Security touches a basic national concern. In addition, it makes no sense to enact laws which will not gain a substantial increase in compliance by the affected taxpayers while increasing the already complex administrative responsibilities of the Internal Revenue Service. The Committee's solution must adequately and candidly deal with the question of compliance. Ultimately, the Committee's recommendation will be tested by the extent to which the new or clarified tax laws result in increased taxpayer compliance.

PROBLEM: (Employee--Independent Contractor)

Although it is fairly clear that the current threshold amount must be revised before an employer is obligated to make Social Security payments, a primary element of the discussion has not been sufficiently addressed--namely, the status of a domestic provider as employee or independent contractor. Notwithstanding the simplistic application of the common law test by the IRS to determine that most domestic providers are employees, the variety of different arrangements between household consumers and domestic providers reveal that the simplistic conclusion is simply not supported by the law. Under long-standing tax regulations, the

IRS's position with respect to domestic providers is that domestic providers are employees and the regulations cite the following as a definition of an employee:

> . . . [A] home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him. . . .

IRS Regs. 31.3121(d)-1(d)(iii). Thus, it would appear that if the domestic provider cleaned a house according to his or her sense of mission and/or brought in his or her own cleaning materials, such domestic provider, under the regulation quoted above, would not be an employee. In fact, there are many situations in which a domestic provider has direct access to the house and performs the service, according to his or her own time schedule, without any direction from the operator of the household and provides all of the cleaning materials. The same domestic provider may work for twelve to fifteen different households. In such situations, the domestic provider would be an independent contractor.

Where a domestic provider develops a large contingent of household clients, he or she might decide to operate a domestic employment agency. It is the position of the IRS that where the domestic employment agency refers domestic providers to the household client, holds itself out to the public as being in such business, and receives requests from household consumers, the agency is the employer of those domestics who actually perform the work. *See* Rev. Rul. 56-502, 1956-2 C.B. 688. This position applies whether the household consumer pays the agency or the domestic provider directly. *Id.* at 689.

The position of Rev. Rul. 56-502, *supra*, was expanded to a licensed babysitting agency so that the babysitter performing the work was an employee of the licensed agency rather than of the household consumer. *See* Rev. Rul. 74-414, 1974-2 C.B. 344. The extension of Rev. Rul. 56-502 to licensed babysitting agencies created serious difficulties for such agencies. Former Senator James B. Allen, among others, requested that the IRS reconsider its position as stated in Rev. Rul. 74-414, because these valuable public service agencies were being driven out of business by the IRS. *See* Cong. Rec. July 17, 1977 at 33,847 (copy attached). Since the IRS failed to take appropriate action, Congress enacted Section 3506 of the Internal Revenue Code of 1986 (Code). Section 3506 specifically states that such babysitting agencies are not to be treated as employers. This provision, enacted in 1977, was applied to all payments made after December 31, 1974.

As a result of these changes regarding the status of a babysitting agency as employer, the question was raised whether the individual babysitter performing the service was an <u>independent contractor</u> or an <u>employee</u> of the household consumer. Interestingly, the IRS held that such babysitters were <u>independent contractors</u> for purposes of social security and as such were required to pay the tax as a self-employed person under section 1401 of the Code.

Thus, certain babysitters are classified as independent contractors, and certain domestic employment agencies are classified as employers. Why is it not possible for a single individual domestic provider, not otherwise referred to the job by an agency, to qualify, under the common law test, as an independent contractor? He or she may operate as an independent contractor so long as: (1) they determine the day and time of the day in which the service is performed; (2) they are not directed as to how such service is provided; (3) they bring their own cleaning materials; (4) they do not normally provide more than 130 hours per quarter (10 hours a week) in services for any one household; (5) they provide the same service for a number of other households; and (6)

they intend to be an independent contractor and so inform the household consumer. In short, under the common law standard, such domestic provider is an independent contractor.

Congress has provided specific relief to certain taxpayers in controversies where the IRS has reclassified independent contractors to employee status. *See* Revenue Act of 1978, Act sec. 530, Pub. L. No. 95-600 as amended by Pub. L. No. 96-167, Pub. L. No. 96-541, Pub. L. No. 97-248 & Pub. L. No. 99-514. In brief, the reclassification would be on a prospective basis if the taxpayer filed certain information returns and the worker in question was never treated as an employee, and the taxpayer's position was based on any one of the following criteria:

(1) judicial precedent, rulings, technical advice or letter rulings to taxpayers;
(2) a past audit was conducted by the IRS and there was no employment tax assessment where services of the same nature were provided; or
(3) the position was based on a long-standing, recognized practice of a significant segment of the industry.

Id. Section 530 of the Revenue Act of 1978 was extended on an indefinite basis by Congress in 1982. *See* 26 U.S.C. 530; Pub. L. No. 97-247 at sec. 3508, 96 Stat. 552. Clearly, the alleged and assumed non-compliance with respect to domestic providers may reasonably be based on the long-standing view of the public that part-time domestic providers are not employees. What has complicated the situation is the torrid public and political fallout relating to the full-time domestic servants of Zoe Baird. In the glare of that publicity, few authorities publicly offered the view that some part-time domestic providers may indeed be independent contractors.

The Committee is thus faced with the view, as expressed by the IRS, that all domestic providers are employees. As the above legal history reveals, that is not true unless we adopt the unstated but implicit position that no unskilled worker can ever qualify as an independent contractor. I don't believe that the IRS's application of the common law test to domestic providers can be sustained in all cases. Understandably, part of the basis for the legal conclusion of the IRS is administrative convenience--i.e., it is more likely the household consumer would have the resources to pay back taxes and conversely, it is less likely that the domestic provider would have the resources to pay back taxes. Although the economic circumstances of the domestic provider may be pressing, this does not mean that all household consumers are employers.

The Committee needs to create clear guidance on the question of domestic providers as employee or independent contractor. Congress has frequently addressed specific employment matters such as those which relate to babysitting referral agencies. More specifically, the 1982 enactment of section 3508 of the Code, requiring realtors to be treated as independent contractors, is an example of a congressional edict in a similarly sensitive area. As the husband of one very perky realtor, Beverly Moran, and being quite familiar with her duties as a realtor, the actual case for employee status of a full-time realtor is much stronger than that relating to a part-time domestic provider.

Conclusion

I recommend that the Committee establish clear statutory guidance on the issue of employee versus independent contractor for all domestic providers. This new position should be applied retroactively. Amnesty should be provided as to penalties and criminal sanctions to all who comply with the new clarified standards within six months after its adoption by Congress.

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Since the age of dual careers is upon us, and the household is an expanding industry, we must recognize the tax and economic impact of these changes. We must increase the requirements for informational reporting of payments from the household centers, streamline the procedures for paying taxes relating to domestic providers who are employees, and be very candid about the specific norms which we ask the IRS to enforce. My draft proposal is attached below.

PROPOSAL

1. Increase the amount which triggers the liability to pay Social Security taxes to the amount which would qualify such person for a quarter of coverage. Presently, $590 is the amount of wages required for a worker to qualify for a quarter of coverage.

2. Recognize that increasing the amount required before one incurs the obligation to pay Social Security taxes may result in some domestic providers not having any payment made on their behalf and therefore failing to qualify for eligibility purposes. Congress should consider coverage at some minimum level for "all" citizens in the same way that universal health care will likely be made available for all citizens. We are partially moving in this direction through the earned income tax credit, in that certain persons may, under an expansion of the earned income tax credit, obtain a tax refund not only of all income taxes paid but also a portion of the F.I.C.A. taxes paid.

3. Allow the household consumer and the domestic provider to enter into a contract which clarifies the relationship between the parties for income, Social Security and unemployment tax purposes.

   (a) Establish a level of working hours beyond which the domestic provider may not qualify as an independent contractor--I propose 130 hours per quarter.

   (b) The household consumer and the domestic provider would execute a document which clarifies their relationship with respect to employee or independent contractor status. Such document would also carefully inform the domestic provider of the benefits and detriments of such an agreement. The IRS should be required to prepare the form upon which the information is presented.

   (c) Since many domestic providers, particularly part-time workers, may not receive sufficient payment in any one quarter or year from any one household to qualify under Social Security, it is preferable to treat these part-time domestic providers as independent contractors for tax purposes. In this way, they can qualify by aggregating all such earned income to meet the eligibility requirements of Social Security. For these part-time domestic providers, I would require all household consumers to both report the amount of their payments for service and pay tax (7.65%) on that amount to the IRS. This amount, equal to one-half of the self-employment tax, would be reported as income by the domestic provider. The domestic provider would report all such items on Schedule C of their income tax return (Form 1040) and receive a credit for the tax paid by the household consumer:

Example:

A employs B to perform cleaning services 1-1/2 days a month for a payment of $100 per month. The payment is less than the new threshold established by Congress ($590). Since the amount of time is less than 130 hours per quarter, the domestic provider would be treated as an independent contractor. By February 28 of each year, A would be required to file an informational return showing:

Payment		Tax	Total Payment
$1200	X .0765 =	$91.80	$1291.30

B would report the $1291.80 as income along with other payments from other household consumers on Schedule C and file Form 1040 S.E. getting full credit for the $91.80 in taxes paid. A would attach a copy of that schedule to his or her income tax return and pay the $91.80 to the I.R.S.

4. NEW RULE FOR ALL PAYMENTS MADE BY THE HOUSEHOLD CONSUMER IN EXCESS OF THE NEW THRESHOLD PAID TO HOUSEHOLD PROVIDERS OTHER THAN DOMESTIC PROVIDERS.

Require that all individuals who work in the household industry on intensive but short-term projects, such as painters, register as independent contractors by securing a employer tax identification number. Require that all payments equal to or greater than the threshold standard for services ($590 per quarter as previously recommended) be reported by the household consumer on a schedule, attached to their income tax return, setting forth the name, address and employer tax identification number of each such payee.

5. Impose a minimum penalty of $500 for any household consumer who fails to file the new schedule with his or her income tax return.

6. All domestic providers must submit a report within six months after the adoption of this Act indicating whether they intend to claim coverage for Social Security purposes as an employee.

7. Employment Tax Amnesty:
Tax amnesty, as it relates to domestic providers, raises first the question of whether the domestic provider is an employee or an independent contractor. I would suggest that Congress enact a statute setting forth guidance establishing safe harbors for the benefit of all parties. Persons who work for numerous clients and do not work more than 130 hours per quarter (10 hours per week) for any one individual should be considered independent contractors. The IRS's current nonfiler program should be fully extended to these employment tax matters. Waiver of all penalties, civil and criminal, should apply. An inability to pay income and F.I.C.A. taxes, and interest thereon, should be reviewed under the offer-in-compromise program. With respect to any domestic provider who establishes an economic inability to pay, the taxes and interest should be forgiven. However, the domestic provider should not lose eligibility for Social Security purposes, despite the absence of payment, so long as they file all appropriate tax returns within six months after the adoption of this program.

Household consumers who failed to pay Social Security and unemployment taxes for employees, as determined under the clarified test, should receive waiver of all penalties, civil and criminal, but should be required to pay past taxes plus interest. Where the amount of the tax liability exceeds their ability to pay, consideration should be given to accepting an offer-in-compromise. Unlike the domestic provider, the liability of the household consumer for failure to pay taxes and interest should be less easily forgiven.

The relief of Section 530 of the Revenue Act of 1978 should also be fully applicable. Where a household consumer has employed a domestic provider on a full-time basis, or well in excess of 130 hours per quarter, the legislative record should reflect the view that relief under Section 530, absent other factors, should not be available. Where such domestic provider has worked for any one household consumer not in excess of 260 per quarter (keeping in mind that this tax amnesty only applies retroactively), the relief of Section 530 should be made available. These details must be established by statute as it is the IRS's practice, according to some tax practitioners, to disregard the intended congressional relief of Section 530.

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